

2956

No. 15000

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United States  
Court of Appeals  
for the Ninth Circuit

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CEDRIC THEODORE BERG and VICTORIA  
RUTH FOUGHTY HELLER,  
Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the Western District of Washington  
Northern Division

FILED

OCT 2 1956

PAUL P. O'BRIEN, CLERK

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No. 15000

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Victoria Ruth Foughty Heller.

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Attorneys for Appellee.

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

RESEARCH REPORT

NO. 100

1955

BY

DR. J. H. GOLDSTEIN

AND

DR. R. M. MAYER

AND

DR. J. E. HARRIS

In the United States District Court, Western District of Washington, Northern Division

No. 49239

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC THEODORE BERG and VICTORIA  
RUTH FOUGHTY HELLER,

Defendants.

### INDICTMENT

The Grand Jury charges:

#### Count I.

That on or about April 13, 1955, Cedric Theodore Berg and Victoria Ruth Foughty Heller did knowingly, wilfully and unlawfully persuade, induce and entice Rose Drucilla West, a female person, to go from San Francisco, California, to the Northern Division of the Western District of Washington, with the intent that the said Rose Drucilla West should engage in the practice of prostitution, debauchery, and for other immoral purposes, and did thereby knowingly cause the said Rose Drucilla West to go and be transported as a passenger upon the line and route of a common carrier in interstate commerce.

All in violation of Section 2422, Title 18, U.S.C.  
A true bill.

/s/ JOHN STEEN,  
Foreman.

/s/ CHARLES P. MORIARTY,  
United States Attorney.

/s/ JOHN A. ROBERTS, JR.,  
Assistant United States Attorney.

Presented to the Court by the foreman of the  
Grand Jury in open Court, in the presence of the  
Grand Jury and filed in the U. S. District Court  
at Seattle, Washington, June 22, 1955. Millard P.  
Thomas, Clerk. By Lee L. Bruff, Deputy.

---

[Title of District Court and Cause.]

### VERDICT

We, the jury in the above-entitled cause, find the  
Defendant Cedric Theodore Berg is guilty as  
charged in the Indictment; and further find the  
Defendant Victoria Ruth Foughty Heller is guilty  
as charged in the Indictment.

Dated: September 30, 1955.

/s/ ANTONIO ROBERTO,  
Foreman.

[Endorsed]: Filed September 30, 1955.

[Title of District Court and Cause.]

MOTION FOR A JUDGMENT OF ACQUITTAL  
NOTWITHSTANDING THE VERDICT, OR  
IN THE ALTERNATIVE A MOTION FOR  
NEW TRIAL

Comes now the defendant, Victoria Ruth Foughty Heller, through her attorney, Max Kosher, and moves this honorable court for a judgment of acquittal notwithstanding the verdict, upon the grounds that the evidence introduced at the trial herein was not sufficient to sustain a verdict of guilty against the defendant, Victoria Ruth Foughty Heller.

That in event a Motion for Judgment of Acquittal is denied, and in that event, the defendant, Victoria Ruth Foughty Heller, through her attorney, Max Kosher, hereby moves this honorable court for an order granting a new trial to the said defendant on the following grounds:

- (1) That the verdict rendered herein was contrary to the interests of justice;
- (2) For error of law occurring at trial and excepted to by said defendant; and
- (3) That the verdict is contrary to law and evidence.

/s/ MAX KOSHER,

Attorney for Defendant, Victoria Ruth Foughty Heller.

Acknowledgment of Service attached.

[Endorsed]: Filed October 3, 1955.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL  
NOTWITHSTANDING THE VERDICT, OR  
IN THE ALTERNATIVE MOTION FOR  
NEW TRIAL

Comes now the defendant Cedric Theodore Berg, by and through his undersigned attorney, Sidney C. Volinn, and moves this honorable court for a judgment of acquittal notwithstanding the verdict, upon the grounds that the evidence introduced at the trial herein was insufficient to sustain a verdict of guilty against said defendant.

That in the event such a motion for acquittal is denied, and in that event, defendant further moves for an order granting a new trial to said defendant on the following grounds:

(1) That the verdict rendered herein was contrary to the interests of justice;

(2) For error of law occurring during the trial and excepted to by the defendant;

(3) That the verdict is contrary to the law and evidence.

/s/ SIDNEY C. VOLINN

Of attorneys for Defendant Cedric Theodore Berg.

Acknowledgment of Service attached.

[Endorsed]: Filed October 24, 1955.

In the United States District Court, Western  
District of Washington, Northern Division

No. 49239

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC THEODORE BERG,

Defendant.

## JUDGMENT, SENTENCE AND COMMITMENT

On this 1st day of November, 1955, the attorney for the Government, and the defendant, Cedric Theodore Berg, appearing in person and being represented by Louis Roussio and Sidney Volinn, his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given to the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof; that the Probation Officer of this district has made a presentence investigation and report to the Court; now, therefore,

It is adjudged that the defendant has been convicted by jury verdict and is guilty of the offense of violation of Section 2422, Title 18, U.S.C., as charged in Count I of the Indictment, there being only one count in the Indictment herein, and the Court having asked the defendant whether he has anything to say why judgment should not be pro-



nounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged in Count I and is convicted.

It is adjudged and ordered that the defendant, on Count I of the Indictment, be committed to the custody of the Attorney General of the United States for imprisonment in such institution as the Attorney General of the United States or his authorized representative may by law designate for the period of eighteen (18) months.

It is further ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in open court this 1st day of November, 1955.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Presented by:

/s/ MURRAY B. GUTERSON,  
Asst. United States Attorney.

(Vio. White Slave Traffic Act.)

[Endorsed]: Judgment Filed and Entered Nov. 1, 1955.



In the United States District Court, Western  
District of Washington, Northern Division

No. 49239

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTORIA RUTH FOUGHTY HELLER,

Defendant.

### JUDGMENT, SENTENCE AND COMMITMENT

On this 1st day of November, 1955, the attorney for the Government, and the defendant, Victoria Ruth Foughty Heller, appearing in person and being represented by Max Kosher, her attorney, the Court finds the following:

That prior to the entry of her plea, a copy of the Indictment was given to the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof; that the Probation Officer of this district has made a presentence investigation and report to the Court; now, therefore,

It is adjudged that the defendant has been convicted by jury verdict and is guilty of the offense of violation of Section 2422, Title 18, U.S.C., as charged in Count I of the Indictment, there being only one count in the Indictment herein, and the Court having asked the defendant whether she has anything to say why judgment should not be pro-

nounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged in Count I and is convicted.

It is adjudged and ordered that the defendant, on Count I of the Indictment, be committed to the custody of the Attorney General of the United States for imprisonment in such institution as the Attorney General of the United States or his authorized representative may by law designate for the period of two (2) years.

It is further ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in open court this 1st day of November, 1955.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Presented by:

/s/ MURRAY B. GUTERSON,  
Asst. United States Attorney.

(Vio. White Slave Traffic Act.)

[Endorsed]: Judgment Filed and Entered Nov. 1, 1955.

[Title of District Court and Cause.]

**ORDER DENYING DEFENDANT'S MOTION  
FOR ACQUITTAL AND FOR A NEW TRIAL**

This matter having come on regularly for hearing, before the undersigned Judge in the above-entitled Court, the plaintiff appearing by its counsel and defendant, Victoria Ruth Foughty Heller, appearing in person and with her attorney, Max Kosher, and the Court having taken the Motion for acquittal under advisement, and the Court being fully advised herein, now, therefore,

Ordered, adjudged and decreed that the Motion for judgment of acquittal of the defendant, Victoria Ruth Foughty Heller, notwithstanding the verdict of the jury be, and the same is hereby denied, and it is further

Ordered, adjudged and decreed that the Motion of the defendant, Victoria Ruth Foughty Heller, for a new trial be, and the same is hereby denied.

Done in open court this 3rd day of November, 1955.

/s/ WILLIAM J. LINDBERG,  
Judge of the above-entitled Court.

Presented by Max Kosher, Attorney for Defendant, through Murray Guterson, Assistant United States Attorney.

[Endorsed]: Filed November 3, 1955.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

1. Victoria Ruth Foughty Heller, 4140 S.E. 84th, Mercer Island, Washington.

2. Max Kosher, Attorney for Defendant, 2919 Wetmore Avenue, Everett, Washington.

3. The offense. Title 18, U.S.C. Section 2422, (Violation of the Mann Act—Inducing a woman to go in interstate commerce for the purpose of prostitution).

4. Judgment, Sentence and Commitment was entered on the 1st day of November, 1955, by the Honorable William J. Lindberg, Judge of the above-entitled court, adjudgment that the defendant, Victoria Ruth Foughty Heller, had been convicted by a jury verdict and was guilty of the crime or offense of violation of Title 18, U.S.C., Section 2422; adjudging further that the defendant, Victoria Ruth Foughty Heller, be committed to the custody of the Attorney General of the United States for imprisonment in such institution as the Attorney General of the United States, or his authorized representative may by law designate for the period of Two (2) years, and adjudging further that the Clerk of the above-entitled Court deliver a certified copy of the Judgment, Sentence and Commitment to the United States Marshal, or other qualified officer, and that said certified copy serve as a commitment of the defendant.

5. That the defendant has not been confined, but has been admitted to bail.

That the defendant, Victoria Ruth Foughty Heller, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated Judgment.

Dated this 2nd day of November, 1955.

/s/ MAX KOSHER,  
Attorney for Defendant.

Acknowledgment of Service attached.

[Endorsed]: Filed November 3, 1955.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and address of appellant: Cedric Theodore Berg, in custody.

Name and address of appellant's attorney: None.

Offense: Cedric Theodore Berg did knowingly, wilfully and unlawfully persuade, induce and entice a female person to go from San Francisco, California to the Northern Division of the Western District of Washington with the intent that she engage in practice of prostitution, debauchery and other immoral purposes and did knowingly cause her to go and be transported upon a common carrier in interstate commerce; all in violation of Section 2422, Title 18, United States Code.

Judgment and Sentence: Entered November 1, 1955, adjudging the defendant had been convicted by jury verdict and is guilty of violation of Section 2422, Title 18, U.S.C. as charged in Count I of



the Indictment and sentencing defendant to imprisonment in such institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Eighteen (18) months.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment and sentence.

Dated November 10th, 1955.

/s/ CEDRIC THEODORE BERG,  
Appellant.

/s/ MILLARD P. THOMAS,  
Witness.

Acknowledgment of Service attached.

[Endorsed]: Filed November 10, 1955.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
Western District of Washington—ss:

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of Criminal Procedure, I am transmitting the following original

papers in the file dealing with the action, excluding exhibits, as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Indictment, filed June 22, 1955.
2. Marshal's return on bench warrant (Heller, unexecuted, filed July 1, 1955.)
3. Notice of Appearance of William H. Mullen for Defendant Berg, filed July 28, 1955.
4. Marshal's return on bench warrant, Berg, filed Aug. 1, 1955.
5. Notice of Withdrawal of attorney William H. Mullen, filed 8-3-55.
6. Order Granting Leave to Defense Counsel Mullen to Withdraw, filed Aug. 8th, 1955.
7. Notice of Appearance of Defendant Heller, through attorney Max Kosher, filed Sept. 14, 1955.
8. Praecipes for subpoenas, Barrowman, et al., behalf Government, filed Sept. 17, 1955.
9. Praecipe, government, for subpoenas, Warren, et al., filed 9-20-55.
10. Praecipe, government, for subpoenas, Fick, et al., filed 9-21-55.
11. Praecipe, government, for subpoenas, Gentile, et al., filed Sept. 23, 1955.
12. Praecipe, government, for subpoenas, La-Rossa, et al., filed September 26, 1955.
13. Praecipe, defendants, for subpoenas, Mayes, et al., filed 9-27-55.
14. Marshal's return on subpoenas, Echeverry, et al., filed 9-27-55.

15. Marshal's return on subpoenas, LaRossa, et al., filed 9-27-55.

16. Plaintiff's Requested Instructions, filed 9-27-55.

17. Marshal's return on subpoena, Barrowman, filed 9-28-55.

18. Memorandum of Authorities, government, filed 9-29-55.

19. Defendant Berg's Requested Instructions, filed 9-29-55.

20. Requested Instructions of Defendant Heller, filed 9-29-55.

21. Verdict, filed September 30, 1955.

22. Marshal's return on subpoenas, Gentile, et al., filed 9-30-55.

23. Marshal's return on subpoena, Bard, filed 9-30-55.

24. Marshal's return on subpoena, Mayes, et al., filed 9-30-55.

25. Marshal's return on subpoena, McDowell, filed 9-30-55.

26. Bail bond, additional, Heller, pending sentence, filed 9-30-55.

27. Marshal's return on subpoenas, Baffona, et al., filed 9-30-55.

28. Marshal's return on subpoenas, Warren, et al., filed 10-3-55.

29. Motion Defendant Heller for Judgment of Acquittal notwithstanding the verdict, or for New Trial, filed 10-3-55.

30. Marshal's return on subpoena, Fick, filed 10-6-55.



31. Memorandum in Opposition to Motion for Judgment of Acquittal, etc., filed by government Oct. 17, 1955.

32. Additional Memorandum in Opposition to Motion for Judgment of Acquittal, etc., filed 10-19-55.

33. Motion Defendant Berg for Judgment of Acquittal NOV, or for New Trial, filed Oct. 24, 1955.

34. Memorandum Brief of Defendant Berg in Support of Motion for Judgment NOV, etc., filed 10-26-55.

35. Brief in Support of Dependant Heller's Motion for Arrest of Judgment, filed 10-26-55.

36. Memorandum Concerning Proof of Common Carrier, filed 10-28-55.

37. Affidavit of Service by Mail, filed 10-28-55.

38. Judgment, Sentence and Commitment, Berg, filed Nov. 1, 1955.

39. Judgment, Sentence and Commitment, Heller, filed 11-1-55.

40. Bond on appeal, Defendant Heller, filed 11-1-55.

40-a. Order Denying Defendant's Motion for Acquittal and for a New Trial, filed Nov. 3, 1955.

41. Notice of Appeal, Heller, filed Nov. 3, 1955.

42. Statement of Points on Which Appellant Heller will rely, filed Nov. 3, 1955.

43. Affidavit, Berg, to Proceed IFP, filed 11-10-55, with Order endorsed thereon granting leave to file Notice of Appeal pursuant to USC T. 28, Sec. 1915.

44. Notice of Appeal, Berg, filed Nov. 10, 1955.

45. Bond on appeal, Berg, filed Nov. 14, 1955.

46. Request, Berg, to leave jurisdiction pending appeal, filed 11-25-55.

47. Consent of Surety to leaving of jurisdiction by Defendant Berg, filed 11-25-55.

48. Petition Heller for Extension of Time to docket appeal, filed Nov. 28, 1955.

49. Order extending time of both defendants to Jan. 21, 1956 in which to file record on appeal, filed 11-28-55.

50-a, b, c. Court Reporter's Transcript of Proceedings (3 volumes), filed Jan. 17, 1956.

In witness whereof I have hereunto set my hand and affixed the official seal of said court at Seattle this 17th day of January, 1956.

[Seal]

MILLARD P. THOMAS,  
Clerk,

By /s/ TRUMAN EGGER,  
Chief Deputy.

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

Number 49239

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC THEODORE BERG and VICTORIA  
RUTH FOUGHTY HELLER,

Defendants.

### TRANSCRIPT OF TRIAL PROCEEDINGS

had in the above-entitled and numbered cause, before a Petit Jury, duly empaneled, and before the Honorable William J. Lindberg, a United States District Judge, at Seattle, Washington, commencing at 10:00 o'clock, a.m., on the 27th day of September, 1955. [1]\*

Appearances: Murray B. Guterson, Assistant United States Attorney, Western District of Washington, Seattle, Washington, appeared for and on behalf of the Plaintiff; and Max Kosher, Spriestersbach Building, Everett, Washington, appeared for and on behalf of the Defendant Heller; and Louis Rousso, 725 Central Building, Seattle, Washington, and Sidney C. Volinn, 865 Olympic National Building, Seattle, Washington, appeared for and on behalf of the Defendant Berg.

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\* Page numbering appearing at top of page of Reporter's original Transcript of Record.

Whereupon, the following proceedings were had,  
to-wit: [2]

\* \* \* \* \*

### ROSE DRUCILLA WEST DILL

upon being called as a witness for and on behalf of  
the Plaintiff, and upon being first duly sworn, testi-  
fied as follows:

#### Direct Examination

By Mr. Guterson:

Q. Now, will you speak very loudly in response  
to all the questions so that everyone can hear you.

Will you state your full name, please?

A. Rose Drucilla West.

Q. Is that your name at the present time?

A. I am married now; Dill.

Q. How do you spell your last name now?

A. D-i-l-l (spelling).

Q. In April, 1955, your name was Rose Drucilla  
West? A. Yes, sir.

Q. Is that your maiden name?

A. (Witness nodded in the affirmative.)

The Court: You will have to speak up. The re-  
porter can not get the nod.

By Mr. Guterson:

Q. In April, 1955, where were you living, Miss  
West? [14] A. In Los Banos.

Q. Where is Los Banos?

A. In the San Joaquin Valley of California.

Q. About how far is it from San Francisco?

A. About 126 miles.

(Testimony of Rose Drucilla West Dill.)

Q. Previous to your marriage have you ever been married?      A. Yes, sir.

Q. Do you have any children?      A. One.

Q. A girl or a boy?      A. A girl.

Q. How old is she?      A. Three and a half.

Q. What is your address at the present time?

A. Now?

Q. Yes.

A. Route 1, Box 179B, Dos Palos, California.

Q. California?      A. Yes.

Q. How far is that from Los Banos, California?

A. About twelve miles.

Q. Do you recognize the Defendant, Cedric [15] Theodore Berg, in the court room, Miss West?

A. Yes, sir.

Q. Will you point him out to us, please?

A. (Witness pointed to Defendant Berg.)

Q. Will you identify him?

Mr. Volinn: We will admit that Mr. Berg knows her and——

The Court (Interposing): Will you stipulate that she has identified him?

Mr. Volinn: Yes.

Mr. Guterson: Thank you.

By Mr. Guterson:

Q. (Continuing): Do you recall where it was that you first met Mr. Berg?

A. Sometime in 1949.

Q. In 1949?      A. Yes.

Q. Do you remember in what city that was that you met him?      A. In Los Banos.

(Testimony of Rose Drucilla West Dill.)

Q. How long had you lived in Los Banos in 1949?

A. I moved there in June, 1949.

Q. Where had you lived before that?

A. I was living in Firebaugh and part of the [16] time in Los Banos.

Q. Where is Firebaugh?

A. About thirty-four miles from Los Banos.

Q. How long had you been living there?

A. I came to Firebaugh in 1946.

Q. In 1946?           A. 1946.

Q. Where had your home been before 1946?

A. My home was Arkansas.

Q. From 1946 to 1949 you say you were living in both Firebaugh and Los Banos at different times?

A. Yes, sir.

Q. Were you working?

A. Working in Firebaugh.

Q. What kind of work were you doing?

A. Prostitution.

Q. In Firebaugh, California?

A. Yes, sir.

Q. Were you working as a prostitute when you first met Mr. Berg?

Mr. Volinn: Excuse me. I will object to questioning along this line. I don't see its materiality at the present time.

The Court: It isn't apparent. [17]

Mr. Guterson: Well, I wanted—it will all be tied up. I wanted to show preliminarily how she knows the Defendant and where she met him.



(Testimony of Rose Drucilla West Dill.)

Mr. Volinn: There is no showing or intimation that Mr. Berg had anything to do with that or knew anything about it.

The Court: It may go to knowledge.

Mr. Guterson: I will withdraw that, if your Honor please.

By Mr. Guterson:

Q. (Continuing): Do you remember whether or not Mr. Berg was employed when you first met him?

A. I don't know whether he was on the ship or employed or not when I first met him.

Q. Do you know where his home was in 1949?

A. It was on the Chico Highway. He was living with his mother.

Q. Is that near Los Banos?

A. The highway went through Los Banos.

Q. Did you see Mr. Berg very often during that period?

A. Well, I used to see him off and on up town.

Q. Were you employed as a prostitute at that time?

Mr. Volinn: I will object.

The Court: Objection sustained.

By Mr. Guterson:

Q. (Continuing): Where did you see Mr. Berg?

A. In Los Banos.

Q. Where in Los Banos?

A. I think the first time I met him was at the Los Banos Club, that I remember.

Q. And then where did you see him thereafter?

(Testimony of Rose Drucilla West Dill.)

A. Then I saw him after that when he came to Firebaugh when I was working, and I used to see him at Los Banos when I went over there home.

Q. I see. Did you see Ted Berg again during the summer of 1954?           A. Yes, sir.

Q. And where was that; in what city?

A. In Los Banos.

Q. That was still your home?

A. Yes, sir.

Q. And do you recall where it was you saw him in the summer of 1954? [19]

A. Well, he came out where I was living and I saw him, and we were uptown.

Q. And did you have any conversation with him at that time, Miss West?

A. Well, he was talking then about me——

Mr. Kosher: Just a moment now. If your Honor please, at this time on behalf of the Defendant Victoria Heller I object to any conversation that this witness may have had with the Defendant Berg outside the presence or hearing of Mrs. Heller on the grounds it is hearsay as to her.

The Court: Does this conversation have something to do with——

Mr. Guterson (Interposing): Yes, if your Honor please.

The Court: Well, the Court will instruct the jury that this testimony of any conversation, unless otherwise connected up, is not to be considered at all as to the Defendant Heller but only as to the Defendant Berg.



(Testimony of Rose Drucilla West Dill.)

Mr. Guterson: We submitted an instruction right along those lines, your Honor.

By Mr. Guterson:

Q. Will you relate the conversation you had with Mr. Berg in Los Banos during the summer of [20] 1954?

A. He was talking about me coming up here. He said he was coming back to go on a ship.

Mr. Volinn: Just a minute.

Mr. Guterson: Excuse me.

Mr. Volinn: I would make an objection to that. The foundation is wrong. There is quite an extensive area in time and latitude of space.

The Court: I suggest you fix a time and place and persons present.

Mr. Guterson: All right.

By Mr. Guterson:

Q. Do you know what month you saw Mr. Berg during the summer of 1954? A. In August.

Q. Now, do you recall where it was you saw him?

A. He came out by the ranch where I was living, and I saw him in town.

Q. Is that the ranch near Los Banos?

A. Yes, sir.

Q. And when you say "in town" you mean Los Banos? A. Yes, sir.

Q. Did you have a conversation on one of [21] these occasions, either at the ranch or in town?

A. When we were talking we were in the car riding from the ranch into town.

(Testimony of Rose Drucilla West Dill.)

Mr. Kosher: We object on the grounds it is not responsive.

The Court: The Court doesn't feel it should be stricken. It is related.

By Mr. Guterson:

Q. Where were you and Mr. Berg when you had a conversation with him in August, 1954?

A. In the car riding from the ranch into town.

Q. In whose car was it?

A. It was his car at the time.

Q. Now, will you tell us what the conversation was and what you said and what he said.

A. He was wanting me to come to Seattle. He said he was coming back and going on a ship and he would write me a letter, and said something about me coming up here; and he wrote me a letter and I never answered it.

Q. Just the conversation in the car.

Mr. Volinn: She has already answered that.

Mr. Guterson: Has she? All right. [22]

The Court: It will stand unless there is a motion against it.

By Mr. Guterson:

Q. (Continuing): Not anything about any letters, but just what you and Mr. Berg talked about while driving in his car.

A. Well, he said when I came up in Seattle that there was work in Seattle.

Q. What kind of work?

A. Prostitution is what he was talking about.

(Testimony of Rose Drucilla West Dill.)

Mr. Volinn: I will object to the question as leading.

The Court: The answer may be stricken. What we want is what he said and not inferences.

By Mr. Guterson:

Q. Just tell us what he said and what you said in response to him.

A. He said if I wanted to come up here and work that when he came back in that he would call me when his ship came back in, and then I didn't hear from him any more until he came home.

Q. Was there any further conversation?

A. Not at that time there weren't.

Q. This is in August, 1954. Do you recall [23] approximately when it was you next saw Mr. Berg?

A. It was in March of 1955.

Q. This year? A. Yes, sir.

Q. All right; in March, 1955, where was it you saw Mr. Berg?

A. He came out—I was living in Los Banos and he came out to my house, Ricky's Tavern on the Chico Highway, one-and-a-half miles out of Los Banos.

Q. You were living there in March?

A. Yes, sir.

Q. Did you have a conversation with Mr. Berg on that occasion? A. Yes.

Q. Will you tell us what you said and what he said in this conversation?

A. He told me he knew this lady up here and he had been staying out at her house.

(Testimony of Rose Drucilla West Dill.)

Mr. Kosher: Just a minute. Again I object to this on the ground it is hearsay; conversation outside this Defendant's presence and hearsay as to her.

The Court: The Court again instructs the jury that any conversations that may be related [24] should be considered solely with relation to that defendant and not binding, nor should it be given consideration, with respect to the Defendant Heller.

By Mr. Guterson:

Q. All right; now, with regard to this meeting and conversation with Mr. Berg in March, 1955, will you just tell us what he said and what you said to him?

A. Well, he was wanting me to come to Seattle.  
The Court: What he said.

A. (Continuing): He said for me to come to Seattle and he was coming back and he would check on it and then he wanted me to come up.

By Mr. Guterson:

Q. Did he say anything further; did you say anything further about whether you would or wouldn't?

A. I told him then I would come up and he said he would let me know when he got back up here.

Q. Just relating to the times which you saw him, did anyone, either you or he, say why he wanted you to come to Seattle?

A. No, there was no one present at the time.

Q. Just the two of you? [25]                      A. Yes.

(Testimony of Rose Drucilla West Dill.)

Q. What kind of work did he say he wanted you to come to Seattle for?

Mr. Volinn: That is a leading question.

The Court: Objection sustained.

By Mr. Guterson:

Q. (Continuing): Was there anything further said, Miss West?

A. Well, when he told me about the house of prostitution he said it was O. K., nothing to worry about, everything was all right, and that is all he said.

Q. Did you say he mentioned a lady's name; did he say anybody's name?

A. He said Vicky is all; at the time that is all he said.

Q. Did he say anything further at all about Vicky?

A. He just said that she had her place and it was O. K. and that she had a good set up there.

Q. Did you agree to come up here at that time or not?

A. Yes, I said I would come up.

Q. Now, when was the next time following [26] this conversation that you had with Mr. Berg in March—when was the next time you spoke to Mr. Berg?

A. He called me on a Sunday morning early in the morning around six o'clock.

Q. O.K.           A. That was on the 3rd.

Q. Where were you when you received the telephone call?           A. I was home.



(Testimony of Rose Drucilla West Dill.)

Q. Where was your home?

A. That was Los Banos.

Q. And what was your address at that time; where were you living?

A. I got my mail in town because the route mail didn't go out.

Q. Where was your home?

A. Ricky's, Apartment Number Five.

Q. Ricky's, Apartment Number Five?

A. Yes.

Q. And do you recall what your telephone number was at Ricky's Apartments? A. 2404.

Q. Excuse me? A. 2404. [27]

Q. 2404?

A. (Witness nodded in the affirmative.)

Q. About what time did the telephone call come?

A. It was real early in the morning, around six o'clock.

Q. Do you recall what day of the week it was?

A. Third, on Sunday morning.

Q. Did you answer the 'phone yourself?

A. Yes, sir.

Q. And when you answered the 'phone, who was on the other end of the 'phone? A. Ted.

Q. Did he identify himself to you?

A. Yes. Well, I knew his voice too.

Q. I see; what did Mr. Berg say to you?

A. Well, he asked me how I was and then he said, "I want you to meet Vicky."; and he wanted to know if I wanted to come up; and I did not see him just before he left and he said he came back and

(Testimony of Rose Drucilla West Dill.)

wanted to be sure everything was O. K. before he sent for me. Then he introduced me to Vicky over the 'phone.

Q. Did you talk to a lady over the telephone?

A. Yes, sir.

Q. Was this the lady that Mr. Berg introduced you to over the telephone?      A. Yes, sir.

Q. What conversation did you have with the lady over the telephone?

Mr. Kosher: Just a minute. I object to that as hearsay unless she can identify the Defendant Heller as the person to whom she talked, which would be a physical impossibility if she was in Los Banos.

The Court: What representation do you make?

Mr. Guterson: This will all be tied up in the orderly presentation when the witness does come to Seattle.

I will go into some more preliminary questions.

The Court: This isn't a conspiracy case. I think probably the objection should be sustained at this time.

Mr. Kosher: May we ask the Court to instruct the jury to disregard any statement she made with reference to being introduced to a woman by the name of Vicky? [29]

The Court: She is just repeating a conversation with the Defendant Berg.

Mr. Guterson: Yes.

The Court: Again, of course, I advise the jury

(Testimony of Rose Drucilla West Dill.)

that these conversations are to be considered only with relation to the Defendant Berg at this time.

Mr. Guterson: All right.

By Mr. Guterson:

Q. (Continuing): With regard to the conversation with Mr. Berg on this Sunday morning, will you tell us what he said to you?

A. Well, he told me—he asked me if I would come up there.

The Court: Excuse me just a moment. The objection, of course, was only as to the conversation with the woman.

Mr. Guterson: Yes; now going into the conversation with the man, Mr. Berg, whom she knows.

By Mr. Guterson:

Q. Will you go ahead?

A. He was talking to me and he said, "Come on up.", and everything was O. K. and I had nothing to worry about, and he said it was all right and I [30] said I would come up and we hung up then.

Q. Did you immediately leave Los Banos after this; after this 'phone call? A. No, sir.

Q. All right; when was the next time you spoke to Mr. Berg, do you remember?

A. In a couple of days after that he called again.

Q. By telephone again? A. Yes.

Q. Where did you receive that call?

A. At my number, 2404.

Q. And when you answered the 'phone, who was on the other end of the line? A. Teddy.



(Testimony of Rose Drucilla West Dill.)

Q. Will you tell us what he said to you on that occasion?

A. He asked me why I hadn't come up and I said, "Well, it was Easter Sunday and my sister and them were coming."; and I said, "I didn't have the money to come up on."; and they said they would send me the money, he would send me the money, to come up on.

Q. Do you recall whether or not you ever received any money?

A. I received the money on the 7th. [31]

Q. Of April?           A. Of April.

Q. Where did you go to get the money?

A. The American Trust Bank at Los Banos.

Q. At Los Banos?           A. At Los Banos.

Q. And how much money did you receive?

A. Sixty dollars.

Q. When was the next time you talked to Mr. Berg?

A. It was on about the 11th, or 9th, 10th or 11th.

Q. Was that by telephone also?

A. Yes, sir.

Q. Where did you receive that call?

A. At 2404.

Q. In Los Banos?           A. In Los Banos.

Q. All right; and what did Mr. Berg say on that occasion?

A. He wanted to know if I got the money and if I was coming up and why I hadn't left, and I said, "I will leave today and I will call you back."; and

(Testimony of Rose Drucilla West Dill.)

then I called them back and I left that night, that Tuesday night.

Q. How did you travel from Los Banos to [32] San Francisco?

The Court: I notice it is a little bit late. I think we will have a recess now.

Mr. Guterson: All right.

\* \* \* \* \*

By Mr. Guterson:

Q. Miss West, I will hand you what at this stage has simply been marked Plaintiff's Exhibit 1 for identification purposes only. Can you tell me [34] whether or not your name appears thereon?

A. Yes, sir.

Q. And is it your signature? A. Yes, sir.

Q. Thank you. Now, do you recall whether or not that was the document you signed in order to receive the sixty dollars from the American Trust Company? A. Yes, sir.

Q. Now, I will direct your attention, if I might, to the conversation you had on the telephone on the same day you left Los Banos. Will you tell us again what that conversation was with Mr. Berg?

Mr. Kosher: I object to that on the ground it is repetitious.

The Court: It has been given once.

Mr. Guterson: She said something about a conversation on the 10th. This is the 12th I am asking about now.

Mr. Volinn: As I understand——

(Testimony of Rose Drucilla West Dill.)

Mr. Guterson: If it was, I will withdraw the question.

The Court: I will ask the witness.

Was this conversation given before when you testified or is it another conversation in addition [35] to that which you testified to on the 10th or 12th?

The Witness: The last day I left, on the 12th, I told him I would come up and I told him what time I was leaving.

The Court: And you left that night?

The Witness: Yes.

The Court: You gave that conversation. That was the last conversation referred to.

Mr. Volinn: That is right.

The Court: And she stated she left that night.

Mr. Guterson: All right.

By Mr. Guterson:

Q. (Continuing): When you left Los Banos, how did you travel to San Francisco?

A. My neighbors next door drove me to the airport.

Q. Can you tell us the names of the people who drove you?

A. Joe Scarpete, Tony and Pat Baffuna.

Mr. Volinn: I didn't hear the last name.

The Witness: Tony and Pat Baffuna.

The Court: Three persons? [36]

The Witness: Yes, sir.

By Mr. Guterson:

Q. Do you recall whose car it was you were driving in?

(Testimony of Rose Drucilla West Dill.)

A. Pete's car; Joe Scarpete's.

Q. About what time, if you remember, did you leave Los Banos?

A. Around eight o'clock something.

Q. In the morning or evening?

A. In the evening.

Q. About what time, if you remember, did you arrive at San Francisco?

A. Eleven; about one-half hour before the plane left; around eleven.

Q. Where did Mr. Scarpete drive you?

A. He drove me right to the airport and I got out and went in and they left.

Q. Did you have any luggage or baggage with you?      A. I had two luggage.

Q. Where was it kept during the ride from Los Banos to San Francisco?

A. It was in the car.

Q. And where did they leave you off?

A. They left me off right in front of the [37] airport and I went right in with my luggage.

Q. And did they leave?      A. Yes, sir.

Q. Did you have your airplane ticket at that time?

Mr. Volinn: I will object.

The Court: Objection sustained.

By Mr. Guterson:

Q. (Continuing): What did you next do, Miss West, after they left?

A. Just before I left Los Banos I called the airport to see if I could get on the plane and when

(Testimony of Rose Drucilla West Dill.)

they left me off I went up to the Western Airline there and gave my name and got my ticket.

Q. Do you remember how much it cost you for your airplane ticket?

A. Thirty-four dollars and a little bit over.

Q. And where was it you were going; from San Francisco to where?

A. I was coming from there to the Seattle airport.

The Court: Seattle what?

The Witness: The airport; came there.

By Mr. Guterson:

Q. About what time of night did you leave [38] San Francisco?

A. I left at 11:45, right around midnight. The plane was a little late.

Q. Do you recall approximately what time you got into the airport in the Seattle area?

A. Between five-thirty and six.

Q. That morning? A. That morning.

Q. What did you do after you got off the airplane in Seattle?

A. I went to the 'phone and called.

Q. What number did you call?

A. Adams 5680.

Q. Excuse me? A. Adams 5680.

Q. What number was that?

A. That was Vicky's number at her home.

Q. Who had told you to call that number?

A. Teddy gave me the number to call.

(Testimony of Rose Drucilla West Dill.)

Q. In one of your previous 'phone conversations?

A. (Witness nodded in the affirmative.)

Mr. Volinn: That is quite leading.

The Court: They are quite leading.

Mr. Kosher: We also renew our objection [39] to the extent that this is hearsay against the Defendant Heller.

The Court: I think that is covered by the Court's instruction to the jury. Any conversation with the Defendant Berg, alleged conversation with the witness, is hearsay so far as the Defendant Heller is concerned and not to be considered in connection with her guilt or innocence.

Mr. Guterson: Thank you, your Honor.

By Mr. Guterson:

Q. When you dialed Adams 5680 did someone answer the 'phone?

A. Vicky answered the 'phone.

Q. How many times did you call from the airport?

A. She answered the 'phone and she told me to get a cab. They were going to meet me and they didn't have a car and she told me to get a cab and come out to the house and she gave me the address and I didn't write it down and I wasn't sure of the address so I turned around and called again to be sure I had the right address.

Q. And who did you talk to then?

A. The second time I called I talked to both of them. [40]



(Testimony of Rose Drucilla West Dill.)

Q. What did you do after speaking on the telephone?

A. I got a cab and told him the address and went over there.

Q. About what time in the morning did you arrive?

A. A little after six when I got there; between six and seven, maybe.

Q. I see; now, do you recall where this house was that you came to?

A. It was 84th Southeast. I don't remember just the exact number. Mercer Island.

Q. Mercer Island?           A. Mercer Island.

Q. Did you go in the house?

A. The cab drove up and Teddy came out the door and met me and took me in.

Q. Was there anyone at the house besides Ted Berg?           A. Not at that time.

Q. Did Ted take you in the house?

A. Yes, sir.

Q. Did you get introduced to anyone else?

A. Well, Vicky was right there when I walked in by the kitchen and she said, "I am Vicky." [41]

Q. Now, do you recognize the woman that Ted Berg introduced you to on the morning of April 13, 1955; is she present in the court room at this time?           A. Yes, sir.

Q. Will you point her out for the court and jury?

A. There. (Witness pointed to Defendant Heller.)



(Testimony of Rose Drucilla West Dill.)

Q. The girl in black with the white collar?

A. Yes, sir.

Q. What did Mr. Berg say to you in Mrs. Heller's presence when he introduced you to her?

A. He said, "This is Vicky."; and she said, "I am Vicky you met over the 'phone when talking to you."

Q. She said that?

A. Yes. She said, "I am Vicky."

Mr. Volinn: Excuse me. I didn't hear that statement.

(Whereupon, the following was read by the reporter: "Q. Yes. She said, "I am Vicky.")

Mr. Volinn: Well, now——

(Whereupon, there was a brief pause.) [42]

By Mr. Guterson:

Q. Now, Miss West, I will direct your attention back to the first 'phone call that you received on an early Sunday morning that you related about before.

At that time did you speak to someone named Vicky? A. Yes, sir.

Q. Now, will you relate the conversation that you had with Vicky?

Mr. Kosher: Object to that on the ground that it is hearsay.

Mr. Guterson: Your Honor, at this time I think we have laid a sufficient foundation. Now that she met her in person we can go back and tie up the matter.

The Court: I will skip it now and hear from

(Testimony of Rose Drucilla West Dill.)

Counsel after the recess in view of the objections. If you have any authorities to submit, I will hear from both sides.

Mr. Guterson: Shall I go on to another subject?

The Court: Yes, and then you can go back.

Mr. Guterson: Thank you. [43]

By Mr. Guterson:

Q. (Continuing): After you were introduced to Mrs. Heller by Mr. Berg when you arrived at the house, did you have any conversation with the two of them?

A. Teddy went on in the back and she was telling me——

Q. (Interposing): Who is “she”?

A. Vicky told me about the way that she worked the prostitution and the way she took the money out and everything.

Mr. Volinn: I will object to this conversation.

The Court: You are asking for a conversation now, is that right?

Mr. Guterson: Yes.

The Court: I think in these conversations you should establish where it was and who was present before you ask for any conversation.

Mr. Guterson: All right.

By Mr. Guterson:

Q. Now, your conversation then was with Mrs. Heller, is that correct?      A. Yes, sir.

Q. And where were you and Mrs. Heller at [44] when you conversed.

(Testimony of Rose Drucilla West Dill.)

A. We were sitting at a little table in the kitchen.

Q. At her home?           A. At her home.

Q. Was Mr. Berg in the room?

A. He had stepped back in the bathroom, or one of the bedrooms when she was telling me.

Q. Now, will you relate the conversation. This was the first morning you arrived in Seattle?

A. (Witness nodded in the affirmative.)

Mr. Volinn: I will make a formal objection to the answer inasmuch as it is hearsay insofar as the Defendant Berg is concerned.

The Court: Any conversation not held in the presence of another defendant is not to be considered with relation to that defendant if he were not present.

Mr. Guterson: Thank you, your Honor.

The Court: Now, in giving these conversations, the purpose is—we are seeking the words spoken by you and by the person with whom you were speaking. If you don't recall the exact words you can give the substance; but, to begin [45] with, attempt to repeat the conversation as it occurred.

Mr. Guterson: Thank you.

By Mr. Guterson:

Q. Would you repeat, as best you can, the conversation you had with Mrs. Heller?

A. Well, she told me—Mrs. Heller told me—if I stay in the house and she had all the customers and they all came by call, and if I stay in the house she takes three dollars out of ten dollars

(Testimony of Rose Drucilla West Dill.)

when I have intercourse with the men when they pay me, and if I go out she takes four dollars out of the ten dollars. That is the way she divided up the money.

Q. What did you say to her in response to this conversation?

A. I just listened to her when she told me and I said O.K.

Q. Had you brought your baggage with you from your trip out to the home there?

A. Yes, sir.

Q. Did you stay at the home or did you stay somewhere else?      A. No, sir, I stayed there.

Q. What did you do that day; that is, Wednesday, [46] April 13, 1955? Do you recall what it was you did that day?

A. During that day I went to bed and slept until about noon and then I had—I turned—I had intercourse with one man that day, that morning, that day there.

Q. Did you receive any money for that act of intercourse?

Mr. Volinn: Wait a while. I am having difficulty hearing the witness here. I wonder if she could speak more slowly.

The Court: And speak louder.

Mr. Rousso: May we have the last question?

The Court: The Reporter will read the last question.

(Testimony of Rose Drucilla West Dill.)

(Whereupon, the following was read by the reporter: "Q. Did you receive any money for that act of intercourse?")

Mr. Guterson: Was there a further question?

A. Thirty dollars.

By Mr. Guterson:

Q. Do you recall what you did the remainder [47] of that day, that same day?

A. That was all that day, that Wednesday.

Q. Did you stay at the house or did you go anywhere?

A. I stayed at the house.

Q. Was there anybody at the house besides Mrs. Heller and Mr. Berg and yourself?

A. Just the children was all.

Q. What children?

A. Her two boys; there were two boys.

Q. Do you know about how old they were?

A. About eight and eleven, or twelve.

Q. During the time that you said you had intercourse with one man and received thirty dollars, was Mrs. Heller at the home at that time?

A. Yes, sir, she was.

Q. Was Mr. Berg in the home at that time?

A. Yes, sir.

Q. Did you remain at the house over night?

A. Yes, sir.

Q. Were you there the next day, Thursday, April 14th? A. Yes, sir.

Q. What did you do on Thursday?



(Testimony of Rose Drucilla West Dill.)

A. That Thursday they went down town and I stayed. [48]

Q. Who is "they"?

A. Vicky and Teddy went down town and I stayed home and she told me if the 'phone rang to answer and tell them to leave a number so that she could call back because she was downtown, and I was there all day and I cleaned house and a yard man came by there and I saw him when I was cleaning and I talked to him and they called earlier and said they was going to bring groceries and they didn't come in until around ten o'clock and they woke me up and I had intercourse with two guys that Thursday, later in the night.

Q. Did you receive money for these two other acts of intercourse on Thursday?

A. I received twenty dollars from one fellow and fifty dollars from the other.

Mr. Volinn: I didn't hear the last question.

The Court: I think it is covered. You can ask the reporter later if you want to get it.

Did the jury hear the answer? Didn't you? If the jury can't hear at any time, let me know. [49]

By Mr. Guterson:

Q. Was Mrs. Heller in the home when these acts of intercourse were performed? A. Yes, sir.

Q. Was Mr. Berg in the home? A. Yes, sir.

Q. Did you stay there at that house over Thursday night and on into Friday morning the 15th?

A. Well, Friday afternoon I went downtown with Teddy.

(Testimony of Rose Drucilla West Dill.)

Q. You were still there on Friday?

A. I was still there, yes, sir.

Q. O.K., go ahead; what did you do Friday?

A. I went downtown with Teddy and Vicky Friday afternoon and then we went back home around seven o'clock in the evening and then they left and went back downtown right after we got home.

Q. What was the total amount of money you received for acts of intercourse, Miss West?

A. One hundred dollars.

Q. What did you do with the one hundred dollars that you received?

A. I gave it to Vicky and she gave—she had on a piece of paper she was figuring it out and she gave me back sixty-two dollars. [50]

Q. What did she do with the other thirty-eight?

A. I never noticed where she put it. She kept it. She gave me the sixty-two dollars.

Q. All right. Did you stay at her home over Friday night and on into Saturday morning?

A. Until Saturday morning when I went next door to the neighbors.

Q. Was Mrs. Heller and Mr. Berg at the home Friday night; did they come back home? You said they left at seven o'clock.

A. They came back home around two o'clock or two-thirty. Saturday morning, that would be.

Q. Were there any other persons present at that time?

A. There were five people there.

Q. Men or women?



(Testimony of Rose Drucilla West Dill.)

A. And then there was one woman came in later after they came home.

Q. Five men you say came with them?

A. Five men. There was two men already in the house and three men came home with them and after they came home a while is when this other lady came.

Q. Did you sleep there Friday night? [51]

A. I slept earlier Friday night before they come home but I didn't sleep then any after they got home.

Q. What happened after they did get home about two o'clock in the morning?

A. Everybody was drinking and they were having a dice game and playing dice and they started accusing—some guy missed his money and they accused me of taking it.

Q. Who is "they"?

A. Vicky and Teddy, and that is when Vicky and Teddy started abusing me and beating me and making me sit on the floor with my clothes off, so I got a skirt and sweater on and when I got a chance I went out of the house to the neighbors through the patio door.

Q. Was this Saturday morning?                      A. Yes.

Q. Do you remember the name of the person whose house you went to?

A. Mrs. Margaret Keating.

Q. Did she live right next door?

A. Right next door.

(Testimony of Rose Drucilla West Dill.)

Q. What did you do with the sixty-two dollars that you kept? [52]

A. That Friday night when they came downtown, and that afternoon when we went back home they went back downtown—well, I gave it back to Vicky. She wanted to borrow it from me so I told Teddy it was in my suitcase and he went and got it and gave it back to her.

Q. I see; after you left her house on Saturday morning did you ever have any other conversation with Mrs. Heller?

A. Well, I went next door to Mrs. Keating's and she took me downtown to the Stewart Hotel and she gave me twenty dollars because I didn't have any money and I called Adams 5680 and tried to get them to give me my clothes.

Q. Who did you talk to?

A. Both Teddy and Vicky. I said I was going home and I wanted my clothes and to set them outside the door and they got real nasty over the 'phone and she said for me to give her the money and I could have the clothes and I told her I didn't have that money and they wanted to know where I was at and I told them by the airport and she said I wasn't going to get my clothes and she hung up on me and I called back again and she said, "You won't get anyplace. I reported you. You get on the street and you will be picked up"; and [53] I said, "All I want is my things"; and, "I want to go home." And Mrs. Keating then told those people to come and talk to me—the detectives.

(Testimony of Rose Drucilla West Dill.)

(Whereupon, there was a brief pause.)

Mr. Guterson: I have nothing further.

Cross Examination

By Mr. Kosher:

Q. You say your name is Mrs. Dill, is that correct?

A. Yes, sir, that is my married name now.

Q. And you were formerly known as Rose West, is that correct?      A. Yes, sir.

Q. Now, is Rose West your correct name or is that an assumed name?

A. That is my maiden name.

Q. Have you ever been known under any other name?

A. I was known as Dolly when I worked at Firebaugh.

Q. Was that an assumed name, "Dolly"?

A. Yes.

Q. And what last name did you use with the name Dolly?      A. Wilson. [54]

Q. Dolly Wilson; have you ever been known under any other names than the ones you indicated here?

A. That is when I was booked in the county jail here as Virginia.

Q. When you were booked in the county jail you told them your name was Virginia; did you tell them your last name?      A. Wilson.

Q. Then when booked at the county jail here you gave them a false name?

(Testimony of Rose Drucilla West Dill.)

A. It was the name I went under.

Q. It was the name you went under; now, have you used any other names?      A. No.

The Court: Speak up. We can't hear. Did you say, "no"?

The Witness: No, sir.

By Mr. Kosher:

Q. Did you ever use the name of Terry?

A. Terry? (Witness nodded in the negative.)

Q. Now, as I understand it, you have lived down in Los Banos, California, for some time; is that right?      A. Yes, sir. [55]

Q. And what did you do for a living down there?

A. At the time when Firebaugh was open I worked in Firebaugh and after that when I lived at Los Banos I lived on the ranch with a Portuguese family and helped them on the ranch.

Q. When you say "Firebaugh was open", what do you mean by that?

A. When I worked there. I didn't work there since they closed up.

Q. What do you mean "work"?

A. Prostitution.

Q. Then you were a common prostitute down there, is that correct?      A. Yes, sir.

Q. Have you ever been convicted of any crime?

A. No, sir; just——

Q. (Interposing): Never been convicted of prostitution anyplace?      A. No, sir.

Q. Have you ever been convicted of disorderly conduct?      A. No, sir.

(Testimony of Rose Drucilla West Dill.)

The Court: If you will, confine your [56] questions to a felony or convictions.

By Mr. Kosher:

Q. Do you understand the question that I asked you?

A. Well, I have never been convicted or did anything there, if that is what you mean. I was booked and fingerprinted at one time there.

Q. Where was that?

Mr. Guterson: This isn't proper. I don't mind him going into it but he can ask about convictions and not about booking or arrests.

Mr. Kosher: I will withdraw the question.

By Mr. Kosher:

Q. (Continuing): Did you practice prostitution anyplace other than in Firebaugh?

A. Well, I have been in San Francisco.

Q. Practicing prostitution there?

A. San Francisco, California.

Q. San Francisco, California?

A. (Witness nodded in the affirmative.)

Q. How long have you been a common prostitute?

A. Since first in 1946 and then I quit in 1952.

Q. You practiced prostitution from 1946 to 1952.  
How old are you? A. Thirty-one.

Q. And you have been married, have you?

A. Yes, sir.

Q. How many times? A. Twice.

Q. And you have a little girl, have you?

A. Yes, sir.



(Testimony of Rose Drucilla West Dill.)

Q. A little girl living with you?

A. She has always lived with a family on the ranch. I didn't have her with me.

Q. You didn't have this little girl with you?

A. She wasn't living with me.

Q. You say you knew Mr. Berg down in Los Banos; is that correct?      A. Yes, sir.

Q. Prior to the time you came to Seattle, Washington, I will ask you whether you have ever seen the Defendant Victoria Heller?

A. Had I ever seen her before?

Q. Yes.      A. No, sir.

Q. And you did not know her at any time prior to April 13, 1955, did you?

A. Just the time that I met her over the 'phone was the first time I knew her, and when I walked in.

Q. She had never talked to you down in Los Banos, had she?

A. Just on the 'phone is all.

Q. You say you got here on the morning of—was it the 11th or 13th; the morning of the 13th?

A. The 11th or 12th; I don't remember the exact date.

Q. You don't remember when you got here. Let me ask you this: Had you been drinking at all prior to the time you left Los Banos?

A. On the way to the airport we stopped and had one beer and when I was in the airport I got two drinks and got on the plane and slept practically all the way up here, until we got to Portland.

Q. Do you remember talking to the sheriff's

(Testimony of Rose Drucilla West Dill.)

deputy sometime on Saturday after you arrived here; Saturday or Sunday?

A. After I left the house?

Q. Yes.

A. I called to see about getting my clothes.

Q. Did you talk to a deputy sheriff?

A. Yes, sir, and I told him I wanted to get my clothes. [59]

Q. Where did you talk to him?

A. I called him on the 'phone. He was over on Mercer Island.

Q. Did he come to see you?

A. No; he told me to call him back and in-between time is when the detectives came to talk to me and I didn't call back.

Q. What detectives were they; do you know?

A. It was Todd and Smith. I know one was Mr. Todd.

Q. Where did you talk to these men at?

A. Well, when I——

Q. (Interposing): Where was the conversation?

A. In the hotel room.

Q. And in what hotel?

A. Well, it was the Spring Hotel. I had been in there a little while and after I called back Teddy and——

Q. (Interposing): Very well; do you remember telling these men you had been drinking and were drunk when you got on the plane?

A. No, I didn't tell them that.

Q. You didn't tell them that? And do you [60]



(Testimony of Rose Drucilla West Dill.)

remember telling them you had turned a trick with the pilot for fifteen dollars on the way up here?

A. Those men, I didn't.

Q. Did you tell that to anybody?

A. I didn't. I slept all the way up on the plane.

Q. But you did make the statement I asked you about?

A. I didn't turn no trick.

Q. You say you got out to Mrs. Heller's house sometime between six and seven in the morning?

A. Yes, sir.

Q. And Mr. Berg came out to the car and got you?

A. He came out to the cab.

Q. And you went back in the house, is that right?

A. Yes, sir.

Q. This house you stayed at is located out on Mercer Island?

A. Yes, sir.

Q. Is it a regular residence; regular house, isn't it?

A. Yes, sir. [61]

Q. And there are houses on either side of it?

A. On one side. On the right side as you drive in there is no house.

Q. There are a number of houses in that neighborhood? In other words, it is a residential district, is it not?

A. Yes, sir, it is a residential district.

Q. And when you got there you saw Mrs. Heller's two little boys?

A. Not right at the time but I wasn't there very long when they got up to go to school.

Q. And at that time did she get the kids off

(Testimony of Rose Drucilla West Dill.)

to school; did she make breakfast for them and send them to school?

A. They ate a bowl of cereal and got dressed and went to school.

Q. And it was at this time she was supposed to have had this conversation with you, is that right?

A. They were after that, that morning.

Q. After the kids got to school?

A. No, right after I got there and then the kids got up to go to school.

Q. Was that before the kids got up to go to school? [62]

A. Yes, sir.

Q. Did you have anything to drink out at the Heller home?

A. Yes, sir, all of us was drinking.

Q. How soon after you got there did you have any liquor to drink?

A. About a couple of hours after I got there. We had some coffee first and then I was there for a little while and then we had a few drinks and I was picking up my hair at the table.

Q. You say you had a few drinks?

A. We all had a drink.

Q. How many did you have?

A. We didn't have over two or three drinks.

Q. And then you say you went to bed?

A. And then I went to sleep.

Q. Did Mrs. Heller leave the house while you were asleep?

A. No, sir.

Q. You are sure of that?

(Testimony of Rose Drucilla West Dill.)

A. She told me—well, after she left I laid back down and went to sleep and took the 'phone into the bedroom and she was trying to buy a car and going to see about this car. [63]

Q. Is that the same day you got there?

A. That morning.

Q. That morning; now, you say you had a few drinks and picked up your hair and went to bed; is that right? A. Yes.

Q. And isn't it a fact that when you went to bed Mrs. Heller left the house?

A. She told me she was going downtown and to answer the 'phone and everything, and I did.

Q. How long was she gone?

A. I don't remember how long she was gone that day, whether she came in around noon or middle of the afternoon.

Q. You don't remember when she came back?

A. Just what time she did come back right now.

Q. Isn't it a fact she didn't come back until way after dinner time, or after supper time?

A. I don't know for sure that day just what time she did come back that first day.

Q. You don't remember then when she came back? A. No.

Q. Isn't it a fact you were intoxicated on [64] that afternoon and don't remember anything what transpired that afternoon?

A. That Wednesday afternoon?

Q. Yes. A. No, sir, I wasn't.

(Testimony of Rose Drucilla West Dill.)

Q. Now, you say that you had one act of intercourse, is that right?           A. Yes, sir.

Q. And do you remember with whom you had that act of intercourse?

A. I don't remember the fellow's name.

Q. Was it somebody that just came out to the house?

A. Well, as far as my knowledge, he called her.

Q. And he didn't call you, did he?

A. No, sir, he didn't.

Q. Did he call her while she was home or while she was gone?

A. She had told him to come out. She was talking to this guy over the 'phone and she said, "I have a girl friend in mind here."; and I never paid any attention to the conversation because she told me not to say anything over the 'phone.

Q. So, when the man came out there you just [65] had an act of intercourse with him; is that right?

A. She told me, "Don't ask him for the money first. When he gets through he will pay you." And, when he got through he paid me thirty dollars.

Q. You don't remember who the man was?

A. I don't remember the guy's name.

Q. You don't remember what he did for a living; he didn't tell you?

A. I didn't ask him and he didn't say. I don't know.

Q. Now, you say while you were out at the house you put your hair up in pin curls?

(Testimony of Rose Drucilla West Dill.)

A. I did that morning right after we got in.

Q. Isn't it a fact when you came to the house you had your hair in pin curls?

A. I had a bandana on my hair and my hair wasn't pinned up.

Q. I will ask you whether or not on Tuesday after Mrs. Heller came home you didn't leave in a taxi and go downtown by yourself?

Mr. Guterson: I will object. She wasn't there on a Tuesday.

By Mr. Kosher:

Q. (Continuing): Wednesday, I mean. Excuse me. [66] A. No, I didn't.

Q. You are positive of that?

A. (Witness nodded in the affirmative.)

Q. I will ask you whether or not you know two gentlemen by the name of Baker, whose last names are Baker. A. Baker?

Q. Yes. A. Yes, I met Baker.

Q. Where did you meet Baker?

A. Well, I met him at the Stewart Hotel. Vicky, and I don't remember who, drove the car, took me to the Stewart Hotel, and she told me what he looked like and she wanted me to go in and meet this guy and bring him out to the house. They wanted to get him in the dice game.

Q. As a matter of fact, you did go down to the Stewart Hotel and got two men by the name of Baker, isn't that right?

A. There was another guy with him.



(Testimony of Rose Drucilla West Dill.)

Q. When was that? Do you remember when you met these two fellows? Was that on Wednesday?

A. I don't remember. That was Wednesday or Thursday.

Q. Could it have been on Wednesday? [67]

A. I don't know for sure just which night it was.

Q. You don't remember then, do you?

A. Which night it was.

Q. But you do remember you met these two men; did you come out to the house in a taxi with these two men?

A. Yes, sir.

Q. And what time was it?

A. It was after midnight.

Q. Now, what was your condition at that time; were you sober or were you intoxicated?

A. No, I wasn't. I had been drinking but I wasn't that drunk. I wasn't intoxicated.

Q. Isn't it a fact when you came out to the house with those two men that Mrs. Heller remonstrated with you about bringing strange men out to the house?

A. No, sir. She knew this fellow and told me, and described him to me, and I went down there, and wanted me to bring him out and we couldn't get all the way in the cab and she sent another guy over by 'phone to show us the direction to the house because I didn't know just how to get there. [68]

Q. Now, how long did these men stay out to the house after you brought them out there?

A. The Baker—the one I knew by his name—



(Testimony of Rose Drucilla West Dill.)

he kept the cab driver there and he left earlier. I don't know what time the other guy left. He was talking to Vicky.

Q. Now, isn't it a fact you wanted to go back downtown with them in their cab?           A. No.

Q. Isn't it a fact that the man Baker wouldn't let you go back with him because he said you were too drunk and too out of line to go anyplace?

A. I wasn't going to go back downtown.

Q. That isn't true?           A. No.

Q. Now, calling your attention to the time that you left Mrs. Heller's house and went out through the patio, do you remember the evening preceding that incident; do you remember what happened there that evening?

A. You mean the night before?

Q. Yes, the time before you left through the patio.

A. I left there on a Saturday morning.

Q. You left on a Saturday morning; calling [69] your attention to Friday afternoon and Friday evening, do you remember what happened during that interval?

A. That Friday afternoon was the afternoon we all went downtown, Teddy and Vicky.

Q. Where did you go downtown?

A. To a bar, but I don't remember the name of it.

Q. Had you been drinking before you went downtown from the house?

(Testimony of Rose Drucilla West Dill.)

A. We had had drinks before we left the house, before we went downtown.

Q. Did you have any drinks downtown?

A. Yes, sir, we all had drinks downtown.

Q. I am not asking about "we all"; did you?

A. Yes, sir.

Q. How many drinks did you have downtown?

A. We had about three drinks there in the bar is all we had.

Q. How many drinks did you have out at the house?

A. I don't know how many; not too many.

Q. By the way, when you came up from Los Banos did you bring any liquor with you?

A. No, I didn't. [70]

Q. Are you sure you didn't bring a bottle in your bag? A. No, I didn't.

Q. Now, did you have——

The Court (Interposing): I think it is recess time. It is a little late. [71]

\* \* \* \* \*

(Whereupon, the jury was returned to the court room.)

The Court: You may be seated.

It is stipulated that the jury and the defendants are present in the court room?

Mr. Kosher: So stipulated.

Mr. Guterson: Yes, your Honor.

The Court: You may proceed, Mr. Kosher.

Mr. Kosher: Your Honor, may we have the last question and answer read?

(Testimony of Rose Drucilla West Dill.)

The Court: Yes; the Reporter will read that.

(Whereupon, the following was read by the reporter: "Q. By the way, when you came up from Los Banos, did you bring any liquor with you?

"A. No, I didn't.

"Q. Are you sure you didn't bring a bottle in your bag?

"A. No, I didn't. [75]

"Q. Now, did you have——")

By Mr. Kosher:

Q. (Continuing): Now, did you have anything to drink at the airport prior to the time you called this telephone number, Adams 5680?

A. No, sir.

Q. You did not; now, going back to this money that you got down in California, do you remember what day of the week that was you picked up the money? A. The seventh of April.

Q. How do you know it was the seventh?

A. Because that—it was on a Thursday before Good Friday.

Q. It was on a Thursday before Friday?

A. Good Friday.

Q. And that is how you fixed the time as the seventh?

A. Well, I remember the date I picked it up; the date.

Q. Now, you didn't leave California until the 12th, was it?

(Testimony of Rose Drucilla West Dill.)

A. The 12th or 13th; it was on Tuesday night of the 12th.

Q. You left Tuesday night the 12th; can [76] you tell us why it was you didn't leave on the day you got the money?

A. That week end was Easter and I didn't want to leave Easter Sunday, before Easter Sunday was over, and I didn't leave until the next week.

Q. You say you knew Mr. Berg for a period of five or six years, is that correct?

A. Yes, sir; four, around '49.

Q. Since '49; did you and he talk about getting married? A. No, sir.

Q. Never did talk about getting married?

A. No, sir.

Q. I will ask you whether or not you told anybody up here after you arrived in Seattle that your purpose in coming up here was to marry Mr. Berg?

A. No.

Q. Now, do you recall having a talk with a judge by the name of Burns after you left Mrs. Heller's home?

A. I had called to see about my clothes, to see if I could get my clothes, and I talked to him over there on Mercer Island.

Q. Did you tell him you came up here for [77] the purpose of getting married? A. No, sir.

Q. I beg your pardon?

A. I told him I wanted my clothes and I was over there and had trouble and all I wanted to do

(Testimony of Rose Drucilla West Dill.)

was to get my clothes and they wouldn't let me have my clothes.

Q. And you didn't say anything at all about getting married? A. No.

Q. Do you remember talking to Mr. Berg's mother just before you left Los Banos?

A. Yes, sir, I talked to her just before I left.

Q. And I will ask you whether or not you told her that you were leaving to come up and marry her son, or marry Teddy?

A. I told her I was leaving to come to see Teddy. I didn't say I was coming to get married.

Q. You told her you were going up to see Teddy, is that right; you didn't tell her you were coming up here to practice prostitution, did you?

A. No, sir.

Q. Now, when you got this money, what did you do with it? [78]

A. I gave fifteen dollars to the lady that had my little girl and then I bought the people that drove me to the airport—I filled up his car. I think it was—I forget what the charge was—close to five dollars; and then thirty-four dollars for my ticket and then I had five or six dollars when I got here, and I paid the cab when they took me to the house.

Q. Now, do you remember telling Mr. Berg that you didn't pick up this money order?

A. No, sir.

Q. And you remember also telling him that you had spent the money to pay some bills with and that was the reason you didn't leave on the seventh?



(Testimony of Rose Drucilla West Dill.)

A. No, I didn't.

Q. You don't remember that at all? Do you remember telling Mr. Berg you had gotten drunk and had spent a good deal of this money and you barely had enough money left to pay these bills with?

A. No, sir, I didn't tell him that.

Q. I will ask you whether or not you had done any drinking from the seventh until the twelfth?

A. From the seventh to—on Saturday before I had been home that week end and never even [79] went out.

Q. What about Saturday; what did you do then?

A. I was in town Saturday and I probably had a couple. I would have stopped in Ricky's for one beer early in the afternoon but that was all.

Q. Didn't have anything else? A. No.

Q. And it was your testimony you didn't tell Mr. Berg after you got in Seattle that you had gotten drunk and spent the money he sent you and that you barely had enough to pay these bills; you didn't tell him that at all? A. No, I didn't.

Q. Did you tell him you had borrowed enough money to buy a plane ticket from a man by the name of Thomas? A. No, sir.

Q. Do you know anybody by the name of Thomas in Los Banos?

A. Yes, sir, I know most everyone that lives there.

Q. Do you have some friends down there by the name of Thomas? A. I know them. [80]

Q. Did you borrow any money from them?



(Testimony of Rose Drucilla West Dill.)

A. No, sir.

Q. You are sure of that?      A. Yes, sir.

The Court: Do you want to interrupt now?

Mr. Kosher: Pardon?

The Court: Is it convenient to interrupt now for a moment?

Mr. Kosher: Yes.

The Court: All right.

(Whereupon, there was a brief pause in the within-entitled and numbered cause during which time the court considered other matters and the following proceedings were then had, to-wit:)

By Mr. Kosher:

Q. All right now, Mrs. West, you say that on your first day at the home of Victoria Heller that you committed one act of prostitution. Can you remember about what time of the day it was, or the night?

A. I don't remember just what time it was.

Q. Well, was it in the day time or in the evening?      A. It was—— [81]

The Court (Interposing): What date is this again?

A. (Continuing): ——in the day time; in the day time.

By Mr. Kosher:

Q. In the day time; what day was it?

A. That was on Wednesday.

Q. That was on Wednesday; and the next day

(Testimony of Rose Drucilla West Dill.)

you say you had two customers, two additional customers?      A. Yes, sir.

Q. And what time did those customers come?

A. One was in the morning and the other one was—they was both after midnight in the morning.

Q. Sometime in the morning?

A. One of them was about three or four o'clock in the morning; in that time there.

Q. Three or four Thursday morning?

A. I don't remember just the time, what time it was.

Q. And what time was the other one?

A. It was in the morning too, not much difference in the time of the two.

Q. Just a short time after three or four in the morning? [82]      A. Yes.

Q. Now, who was in the house when you had the first customer?

A. When I had the first customer?

Q. Yes.      A. Vicky and Teddy.

Q. And who was in the house when you had the second and third customer; that was the next day on Thursday?      A. Vicky and Teddy.

Q. They were both there at all times?

A. Yes, sir.

Q. So that you didn't have any customers at all on Friday; is that right?      A. No.

Q. And you didn't have any customers on Saturday; is that right?      A. No, sir.

Q. And you didn't go downtown to any hotel to commit any act of prostitution?

(Testimony of Rose Drucilla West Dill.)

A. I didn't go in no hotel and do no prostitution, no.

Q. And it is your testimony that all these acts of prostitution took place out at this house on Mercer Island; is that right? [83]

A. Yes, sir.

Q. There are two children living in that house; is that right?

A. Yes, sir.

Q. How old are those children?

A. One is eight and the other is eleven or twelve.

Q. And both of these youngsters went to school, is that right?

A. Yes, sir.

Q. And they slept in the house with their mother, is that right?

A. Yes, sir.

Q. And where were the children when these alleged acts of prostitution were taking place?

A. They were back in their bedrooms sleeping.

Q. Now, had you ever gotten any money from Mr. Berg prior to this time?

A. (Witness nodded in the negative.)

Q. He had never given you a penny before, is that right?

A. No, sir, never.

The Court: You will have to speak up.

The Witness: I said, "no, sir." [84]

By Mr. Kosher:

Q. Had you ever given him any money?

A. No, sir.

Q. And it is your testimony, is it, that he just called you up and told you to come up here and sent you this money and you came up on it; is that right?

A. Yes, sir.

(Testimony of Rose Drucilla West Dill.)

Q. You had no purpose in coming up here except to practice prostitution; is that right?

A. That is what I was coming for.

Q. You didn't know Mrs. Heller at that time, did you?

A. No, I didn't know her except when I talked to her over the 'phone.

Q. And you just knew Mr. Berg casually; is that your testimony? A. Well, I knew him.

Q. And was there any relationship between you and he other than just being good friends?

A. No.

Q. Had you ever slept with him down in California? A. Yes, I had at one time.

Q. Just one time? [85]

A. No, I have been with him several times at home.

Q. Did he ever tell you that he loved you and wanted to marry you? A. No, sir.

Q. Did you ever tell him you loved him and wanted to marry him? A. No, sir.

Q. Never did? A. No, sir.

Q. Never told anybody up here when you came up here you came up here to get married?

A. To marry Teddy? No, sir, I didn't.

Q. Did not say anything like that? You call him Teddy, is that right? A. Yes.

Q. As a matter of fact, everybody else calls him Ted?

A. A lot of people call him Ted or Teddy.

Q. How long had you known his mother?

(Testimony of Rose Drucilla West Dill.)

A. Well, I knew of her when I saw her not too long after I met Teddy and I used to see her, and I don't remember just when I met her, the time I first met her.

Q. Had you made any arrangements with her [86] to bring you to the airport?

A. He had told me to ask his mother to bring me up and I called her and she couldn't make the trip by herself to the airport; so he said he had called his mother and she said she couldn't make it.

Q. But you got these other three men to take you to the airport, is that correct?

A. I got this man and this other fellow and his wife.

Q. You got two men and a woman to take you to the airport; is that correct?      A. Yes, sir.

Q. Now, with reference to the time you left the house of Mrs. Heller, do you remember about what time it was? That is, the last time you left the house. What time was it?

A. When I went over to the neighbors you mean?

Q. Yes.

A. It was in the morning, between maybe nine or ten, or a little after ten. I don't know just what time.

Q. Between nine and ten in the morning?

A. I don't know just what time it was, but [87] it was in the middle of the morning.

Q. Were you sober at that time?

(Testimony of Rose Drucilla West Dill.)

Mr. Guterson: Can we have what day this is, your Honor?

Mr. Kosher: Yes.

By Mr. Kosher:

Q. (Continuing): What day was it you left Mrs. Heller's home the last time?

A. That was Saturday.

Q. About ten o'clock in the morning?

A. In the middle of the morning.

Q. Were you sober at that time?

A. We had been drinking that morning in there.

Q. Does liquor affect you at all? A. No.

Q. Then it is your testimony that you were not intoxicated, is that correct?

A. I wasn't really intoxicated.

Q. Had you been intoxicated that night?

A. No, sir.

Q. Not at all; and you say you had some sort of a commotion in the house before you left?

A. Yes.

Q. What was that commotion over? [88]

A. It was over the money; about some one of the fellows' money there.

Q. I will ask you whether or not you did not in fact steal some seaman's wallet and take some fifty dollar bills out of that wallet?

A. No, sir.

Q. And isn't it also a fact that they compelled you to deliver up this money that you had taken?

A. I never understood you.



(Testimony of Rose Drucilla West Dill.)

The Court: You say you don't understand the question?

The Witness: I don't understand.

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. And isn't it also a fact that they compelled you to deliver up this money that you had taken?")

A. (Continuing): Well, they tried. That is when they were abusing me and kicking me around and everything and trying to make me give them the money, and I didn't have any money. [89]

By Mr. Kosher:

Q. I will ask you if you spit out of your mouth three fifty dollar bills? A. No, sir.

Q. Who was in the house when you had this commotion at the time you say you were abused?

A. There were three—five people there.

Q. Who were they?

A. Six, and a girl there.

Q. All right, who were these people? Do you recognize any of them here in the court room?

A. Yes, sir.

Q. Who do you recognize?

A. I recognize four of them.

Q. All right, will you point them out to us, please?

A. The fellow with the glasses, and one sitting by him in the jacket, and one in the blue suit, and one in the back with the short hair and with the light blue suit.

(Testimony of Rose Drucilla West Dill.)

Q. So that the record will be straight, it is your testimony that you did not spit three fifty-dollar bills out of your mouth in the presence of these four people?      A. No, sir. [90]

The Court: Speak up.

A. (Continuing): No, sir, I didn't have no money in my mouth.

By Mr. Kosher:

Q. Well, did you take any money from anybody that night?

A. I didn't take any of that money. That is what the trouble started over when they started after me.

Q. At any rate, you left this house and you went to the neighbors, is that correct?      A. Yes, sir.

Q. And then later you contacted the police department, is that right?

A. I called to see about getting my clothes and then when they started questioning me I told them where I was and then I started telling them.

Q. Now, with reference to this justice of the peace, did you just talk to him on the telephone or did you go and see him personally?

A. The justice of the peace here?

Q. Yes.

A. They took me from the hotel down to the office at the city building.

Q. Did you talk to the judge down there—justice of the peace? [91]

A. I guess that was him I talked to; the chief

(Testimony of Rose Drucilla West Dill.)

it was supposed to have been. I don't know who they were.

Q. Did you talk to a man by the name of Judge Burns?

A. That is the guy I had called on the 'phone to see about getting my clothes.

Q. Did you ever meet him personally?

A. I didn't meet him down at the building that I know of. I don't remember meeting him down at the city building after they took me down there.

Q. After you left the Heller home and went down to the hotel, did you have anything to drink there?

A. I ordered a beer.

Q. Where did you get the money to buy the beer?

A. I had—Mrs. Keating gave me money, the neighbor, when she took me down to the hotel she gave me money.

Q. How much money did she give you?

A. Twenty dollars.

Q. And that is all the money you had?

A. Well, I had just some loose change in my [92] pocket, a dollar and a half or a couple of dollars.

Q. And you bought some beer and had it sent up to the room?

A. They brought me a beer up to the room.

Q. And that is all you had to drink then?

A. Yes, sir.

Q. Now, did you practice any prostitution down at the Stewart Hotel?

(Testimony of Rose Drucilla West Dill.)

A. No, sir; I was only there a little while and when I called in and registered they said, "Where is your luggage?"; and I said it would be in later, and then when I called about my clothes the manager told me, "Since your luggage hasn't come, you better check out."; and I didn't know where to go and I walked down to the Washington Hotel and I called Mrs. Keating back.

Q. Isn't it a fact that the manager ousted you because you were drunk and disorderly?

A. I wasn't drunk and disorderly. The only thing is I made those two 'phone calls. I walked right straight up to the room and I wasn't even in the hotel; I was right in the room all the time I was there.

Q. But he did ask you to leave the hotel, is that right?

A. He said, "Since your luggage isn't here, you better [93] check out." and I didn't say a word.

Q. No other conversation with the man at all, is that right?      A. No.

Q. Now, were you ever alone in this house on Mercer Island during those three days when Mrs. Heller and Mr. Berg were not present?

A. When they went downtown together when they were talking about buying that car, I was there.

Q. What day was that?

A. They went downtown Thursday. The three days I was there and stayed, they were downtown. She was going and seeing about buying that car.

(Testimony of Rose Drucilla West Dill.)

Q. I didn't get your last answer.

A. I said, most of the three days I was there they was downtown because she was trying to buy that car.

Q. Did she go downtown Wednesday, do you remember? That was the first day you got there?

A. Yes, she went down that day.

Q. About what time did she leave, do you know?

A. I don't know what time it was when she left.

Q. Was it shortly after you arrived there?

A. No, it was quite a while after I arrived.

Q. How much afterwards?

A. I don't know just how much.

Q. Was it more than one hour after you arrived?

A. It was in the day; it was up in the day.

Q. Sometime after in the day; was it after noon or before noon?

A. I don't remember just whether it was around noon or what time it was when she left.

Q. Was it around noon that she left?

A. Probably around noon.

Q. Around noon?            A. I don't know.

Q. And what time did she get back on Wednesday, do you remember that?

A. I don't know just what time she got back; I don't know just what time she got back.

Q. Was it late in the evening?

A. It was later on in the evening or afternoon.

Q. Now, did you have dinner at that house Wednesday? [95]



(Testimony of Rose Drucilla West Dill.)

A. Yes, we fixed something there to eat. I don't remember what we fixed.

Q. Who is the "we"?

A. Teddy was still there and he was cooking some stew or opened a can of stew.

Q. Was that Wednesday?

A. I think that was Wednesday.

Q. Now, I thought you just told me that Mrs. Heller and Ted went downtown and that you didn't remember when they got back but that it was late in the evening; is that right? Is that what you said?

A. I don't know just what time she got back but it was that day we fixed stew, that afternoon.

Q. That afternoon?

A. It was in the afternoon sometime, Wednesday.

Q. Now, what about on Thursday, did she go downtown Thursday? That would be the second day you were there.

A. She went downtown every day I was there but I don't know what time she went down.

Q. Do you remember what time she went on Thursday?           A. No.

Q. Was it in the morning or afternoon? [96]

A. It was always I think around noon when she went.

Q. Around noon?

A. I don't know what time she went down.

Q. What time did she get back Thursday?

A. Between seven and nine o'clock, I guess;



(Testimony of Rose Drucilla West Dill.)

something like that. I don't remember just what time she got back.

Q. Between seven and nine o'clock?

A. I guess it was in that time. I don't remember just what time it was.

Q. Well now, so that we will understand what is happening here, as I understand you, you came in on a Wednesday morning, is that right?

A. Yes, sir.

Q. And Wednesday about noon or thereabouts Mrs. Heller went downtown with Ted?

A. They went sometime that day. It was always around noon when she left.

Q. Let me ask you this: Do you remember for sure every day you were there she went downtown?

A. I think every day I was there she was downtown.

Q. And it is your best recollection she left [97] at noon and didn't get back until seven or nine o'clock each evening, is that right?

A. Except that Friday that I went down with them.

Q. Except the Friday you went down with them, and you are sure that on Wednesday, the first day you got there, she went downtown?

A. Yes, she went downtown that day.

Q. And did Ted go out the first day?

A. The first day? I don't know or remember for sure whether he went with her that day when she left at noon or not.

Q. What about on Thursday?

(Testimony of Rose Drucilla West Dill.)

A. On Thursday?

Q. That would be the second day you were there.

A. I don't know where he went with her that day. One day he went out to the ship. I don't remember just how they did go downtown.

Q. You do know that Mrs. Heller left on Thursday, is that right?           A. Yes.

Q. And you are sure she left about noon or thereabouts; somewhere around noon and that she was gone until seven or nine o'clock in the evening; [98] is that right?

A. As best I remember.

Q. Now, what about Friday; do you remember whether she went downtown Friday?

A. Yes, sir, we all went down on Friday.

Q. All of you went down?

A. Teddy, Vicky and I went down.

Q. Now, sometime ago you testified you went out to the hotel and picked up a man by the name of Baker; what date was that, Mrs. West?

A. Maybe that was Thursday night after midnight. It was after midnight; it was in the morning, after midnight Thursday night.

Q. Thursday night?

A. I think it was after midnight Thursday night.

Q. What time did you go downtown Thursday?

A. Vicky took me down there. She had called and had me call, gave me the number and they took me down to the hotel and they walked in the lobby and I went in the bar and they sat down and when

(Testimony of Rose Drucilla West Dill.)

the guy left they took off and they told me to bring him out to the house.

Q. What time was that?

A. It was around one o'clock, I guess; about [99] one, something like that.

Q. One o'clock in the morning?

A. Something like that.

Q. You went down about twelve, is that right; about midnight?

A. It was a little after midnight because I know it was pretty close.

Q. How did you get downtown?

A. Vicky took me down.

Q. In what car?

A. I don't know whether it was her car or there was some other fellow driving the car.

Q. Who was the other fellow?

A. I don't know who was driving the car.

Q. What kind of a looking man was he?

A. I don't remember who drove the car down there.

Q. As a matter of fact, you knew she didn't have a car at that time; isn't that a fact?

A. Well, she was trying to buy a car at that time. She didn't have a car when I got there.

Q. Was Ted with her at that time?

A. When she took me downtown?

Q. When you and she went downtown?

A. They took me down to the hotel where [100] this guy was at.

Q. You say some unnamed man drove a certain

(Testimony of Rose Drucilla West Dill.)

kind of car, and you don't know what kind of car it was, and you drove down after midnight; and you got back at what time?

A. It must have been about three, because we had a hard time getting back. The cab driver couldn't find the place.

Q. And that was about three o'clock; is that right? A. About that time.

Q. And what did you do after you got home?

A. We were all sitting in the living room and having drinks and they were playing dice.

Q. You testified a little while ago on that date between two or three in the morning that you turned two tricks. What about that now?

Mr. Guterson: Will you give her the date you are referring to?

Mr. Kosher: Yes. Thursday.

Mr. Guterson: You were talking about Friday.

Mr. Kosher: Thursday.

Mr. Guterson: Early Thursday morning or early Friday morning? [101]

Mr. Kosher: Early Thursday morning.

The Court: Let the witness answer the question.

A. I have got mixed up on the dates then because I don't know just what date that was.

By Mr. Kosher:

Q. Well, are you sure; are you sure of anything that you have testified to here?

A. Well, what I said there, but I got mixed up on the dates.

Q. What dates did you get mixed up on?

(Testimony of Rose Drucilla West Dill.)

Wednesday or Thursday, it was one one day and two the next day? Did you have one man the first day you were there and two men the following day?

A. The first day I was there I had one and then two the next day.

Q. Then it is your testimony that you had one man Wednesday afternoon and two Thursday morning, and you had no men at the house Friday or Saturday, is that right?

A. I didn't have no intercourse Friday or Saturday there.

Q. Friday or Saturday; what do you do for a living at the present time?

A. Right now I am just staying at home. My husband is working. He is a carpenter. I just got married the thirteenth of last month.

Q. Thursday?

A. Thirteenth, after I got home.

Q. What did you do from the time you left Seattle until the time you came back up here for the trial; did you work anyplace?

A. No, sir; I was living on the ranch and when I got married I was living with my mother- and father-in-law. [105]

Q. Now, have you testified to a number of conversations you had with Mrs. Heller? Did you have any other conversations with her? Did you talk to her again after you called her on the telephone and asked for your clothes?

A. Any others?

Q. Yes.



(Testimony of Rose Drucilla West Dill.)

A. Just when she called yesterday afternoon over at the hotel is all.

Q. Now, getting to that: You came up here from Los Banos for this trial? A. Yes, sir.

Q. Did you tell anybody you were coming for the trial? A. For the trial?

Q. Yes.

A. In Los Banos everybody knows it, I guess.

Q. Did you notify Mrs. Heller you were coming up here to testify? A. No, sir.

Q. As a matter of fact, didn't you call her house and tell her to call you at the hotel?

A. No, sir, I didn't.

Q. Did she call you at the hotel? [106]

A. She called me yesterday afternoon.

Q. You didn't tell her you were staying at the Olympic Hotel, did you?

A. I didn't know how she knew and I didn't ask her.

Q. You didn't ask her, is that right?

A. No, I didn't. She called up and I recognized her voice and she said, "This is Vicky."; and I didn't ask her how she knew I was there. I didn't know how she knew I was there.

Mr. Kosher: I think that is all. Let me ask one more question. Well, you can proceed.

The Court: Mr. Volinn, are you going ahead?

Mr. Volinn: Yes, I am going ahead with my cross examination. If the Court please, I would like to stand, if I may. It is rather difficult for me to see the witness.



(Testimony of Rose Drucilla West Dill.)

The Court: You may stand there if you wish.

Mr. Volinn: Thank you, Your Honor.

### Cross Examination

By Mr. Volinn:

Q. Now, Mrs. Dill, how many times have you been married? [107]           A. Twice.

Q. And what was the name of your first husband?           A. What?

Q. What was the name of your first husband?

A. Frank Sanchez.

Q. Frank what?

A. S-a-n-c-h-e-z (spelling).

Q. Didn't you go by that name?

A. By that name?

Q. Yes.

A. No, sir, I went by my maiden name.

Q. Didn't you have that name also; didn't anybody call you by that name, "Mrs. Sanchez"?

A. By that name?

Q. Yes.

A. Well, I guess they did at the time.

Q. How long were you married?

A. I wasn't married very long. I left right after I—about three months after.

Q. Well, anyway, you had that name, did you, in addition to Dolly Wilson and Virginia Wilson?

A. Yes, sir, but that was my married name at the time I was married.

Q. And that was Sanchez, you say? [108]

A. Yes.

(Testimony of Rose Drucilla West Dill.)

Q. And where did that marriage take place, and when?      A. I was married in Mexico.

Q. Was that gentleman a Mexican?

A. He was Spanish-Mexican.

Q. And when was it?

A. That was back—I left him in—I have had my divorce from him since 1952, or 1950, or something like that.

Q. '50 or '52?      A. '52, I think it is.

Q. And then you married again?

A. I married again the thirteenth after I left here.

Q. Mr. Dill is your second husband?

A. Yes.

Q. Now, you have a child. How old is the child?

A. She is three and a half.

Q. And whose child is she?

Mr. Guterson: I will object, your Honor. This is completely immaterial.

The Court: I see no reason for the question. Objection sustained. [109]

Mr. Volinn: All right.

By Mr. Volinn:

Q. (Continuing): Now, did you ever use any other names besides Mrs. Sanchez, and West, and Dolly Wilson and Virginia Wilson?

A. No, sir.

Q. Did you ever go to any hotels with any men with whom you were going to engage in an act of prostitution?

A. Did I ever go to any hotels?

(Testimony of Rose Drucilla West Dill.)

A. Yes. You never engaged in an act of prostitution in a hotel?      A. No, sir.

Q. Or a motel? Didn't you testify you were a prostitute?

A. Yes, but at the time this was like a rooming house, a place where we was working.

Q. Was that San Francisco?

A. No, that was——

The Court (Interposing): Some of this cross examination seems to me to be afield. What is the purpose of it?

Mr. Volinn: My purpose is to show that the witness's testimony is contradictory. She testified before that the only names she had been going [110] under——

The Court: That is one thing, but asking about going to motels and hotels——

Mr. Volinn (Interposing): It is preliminary, your Honor.

The Court: On your assurance it is, you may proceed.

By Mr. Volinn:

Q. Well, where did you commit your acts of prostitution in San Francisco?

A. At the time there I was at a hotel with a lady that lived there; I lived right there. I was living there by myself.

Q. And what name did you go under there?

A. That was Dolly. At the time I was working as a prostitute I always used Dolly Wilson.

(Testimony of Rose Drucilla West Dill.)

Q. And then you never engaged in an act of prostitution in some other hotel?

Mr. Guterson: I will object, your Honor.

The Court: Objection sustained. I don't quite see what the purpose is.

Mr. Volinn: Well, all right.

The Court: If you state what the purpose is.

Mr. Volinn: Well, my purpose actually, your Honor, is: If it could be shown she went to hotels with other men then presumably she would register under——

The Court (Interposing): Do you have some testimony that she has registered under some other names?

Mr. Volinn: Not at the present time.

The Court: Then until such time as you have something of that character, I suggest you proceed to other matters.

Mr. Volinn: All right.

By Mr. Volinn:

Q. (Continuing): Now, you have been — you practiced prostitution, from your testimony, from 1946 to approximately 1952?

A. It was around '50, a little after '50.

Q. Until '50? A. About '52.

Q. Was it '50 or was it '52?

A. It was about—between—about the end of '51, I guess it was.

Q. And you never engaged in any acts of prostitution between that date and until you came to Seattle? [112] A. No, sir.

(Testimony of Rose Drucilla West Dill.)

Q. Not at all? How did you make a living during that time?

Mr. Guterson: I will object, your Honor. He can ask her what jobs she had.

The Court: I will overrule the objection. She stated what her activities were. I think the question is proper.

Mr. Guterson: Yes.

By Mr. Volinn:

Q. (Continuing): What did you work at from '52?

A. I worked in a restaurant in Los Banos until I was seven months pregnant with the baby and then I stayed in San Francisco until she was born and then I left there and my husband and lived with this family in Los Banos.

Q. You say your husband came back?

A. When I left San Francisco and left him I came back to Los Banos.

Q. I see.

A. And then moved out on the ranch with this Portuguese family that always kept my baby for me when I was out there.

Q. Now, during the period of time you were [113] a prostitute you had—did you gain any impression as to places where houses of prostitution were located, what kind of buildings they were in, or what kind of neighborhoods they were in?

Mr. Guterson: I will object, your Honor.

The Court: Objection sustained.

(Testimony of Rose Drucilla West Dill.)

By Mr. Volinn:

Q. (Continuing): When you—in your experience as a prostitute, were houses of prostitution ever located in a good residential district of one-family houses?

Mr. Guterson: I will object to that.

The Court: Objection sustained. That isn't the issue here. Get on to something material.

Mr. Volinn: It is preliminary, your Honor.

The Court: It seems to me everything is preliminary. Go ahead and meet the issue.

By Mr. Volinn:

Q. (Continuing): Now, when Berg called you up, do you remember the date, the last telephone call he made?

Mr. Guterson: Just a moment. Are you talking about the first call or the last call? [114]

Mr. Volinn: I am asking her about the first of the series of calls which Berg was supposed to have made down at Los Banos relating to inviting her to Seattle.

A. The first call was on a Sunday morning.

Q. (By Mr. Volinn): And did the long distance operator tell you it was a call from Seattle?

A. When I answered the phone they just put the call right straight through and just said, "Seattle is calling. Is this 2404?"; and I said, "Yes, Ma'am."; and she said, "Go ahead."; and I started talking to him on the 'phone.

Q. Did Berg say that you were to come up to Seattle to practice prostitution; did he use that language?



(Testimony of Rose Drucilla West Dill.)

A. Well, he said he had came back and just——

The Court: The question is: Did he use that language?

By Mr. Volinn:

Q. Did he use that language; did he ask you to come up here to be a prostitute; is that what he said?

A. He didn't use the word prostitute, but to [115] do the work.

Q. Did it occur to you——

Mr. Guterson: Just a minute. Can the witness complete her answer? Had you finished?

A. He didn't just exactly use the word "prostitute" but he was talking to me when he was home and was telling me about the place, is all.

Mr. Volinn: Wait a minute.

The Court: Just a minute.

Mr. Volinn: I object.

The Court: The answer we want here is the conversation at the time; not what you might have understood him to mean, but what he said. If you can't remember the words or the substance of what he said, you can't go on and give your impression.

If you will, restate your question, Mr. Volinn; and bear that in mind.

Mr. Volinn: Would you read the question?

The Court: The Reporter will read the question.

(Whereupon, the following was read by the reporter: [116] "Q. Did he use that language; did he ask you to come up here to be a prostitute; is that what he said?")

(Testimony of Rose Drucilla West Dill.)

A. (Continuing): He said when he called, he told me, he had came back and checked on the place and everything, and as far as the law and everything, and everything was O. K., I had nothing to worry about, and then if I didn't like it I could go back.

By Mr. Volinn:

Q. Isn't it a fact he told you you could come up here to work when he was talking to you on the 'phone on this particular occasion; didn't he tell you you could come up here and work?

A. He said "work" but he knew I knew what the place was because he told me what the place was. Her house, he told me about it.

Q. He told you about a place, did he?

A. Yes, sir.

Q. What place did he tell you about?

A. He told me about Vicky's place. He told me it was her house and I stayed right there.

Q. What right there?

A. It was her home and I stayed right at the house and she had the friends and the tricks came [117] right there. That is how he explained it to me.

Q. Did he ever mention to you that you could work at a night club, the 908 Club, as a waitress?

A. No, sir, we didn't talk about it.

Q. Did he ever mention the 908 Club to you at all?

A. 908?

Q. Is this the first time you have heard of the 908 Club?

A. The first time I have heard of it?

(Testimony of Rose Drucilla West Dill.)

Q. Yes, the first time you have heard of it.

A. The first time I have heard of it.

Q. Now, you testified that there were about three or four telephone calls afterwards; is that correct?

A. Yes, sir.

Q. And on any of those particular calls did he actually say that you were to come up here to be a prostitute?

A. He didn't say the word "prostitute" on the 'phone.

Q. All right; did he on the 'phone use any language showing that—stating that you were to come up here to work as a prostitute? [118]

A. Well, the only time—at one time he said, "If you could get here tomorrow, they have a fellow there in the house and they would try to hold him." And that is the only time he said anything, but he never used those words on the 'phone.

Q. Which telephone call was that, the first or the second or the third or fourth?

A. That was on the second one.

Q. Now, you testified that you had received sixty dollars from Berg on the seventh; is that right?

A. Yes, sir.

Q. You didn't buy your airline ticket until the twelfth; is that right?

A. I bought it the night I came up.

Q. Did you owe any money in Los Banos?

A. Yes, sir, I did.

Q. Who did you owe money to?

A. I owed the Kamp's store.

(Testimony of Rose Drucilla West Dill.)

Q. What kind of a store is that?

A. A men and ladies' store, Kamp's.

Q. How much did you owe them?

A. I think I owed them twenty-two dollars.

Q. And who else did you owe money to?

A. And then I owed Pearl's Dress Shop. [119]

Q. How much did you owe them?

A. Ten dollars.

Q. Who else?

A. And then my rent would have been due the twenty-eighth of that month. It wasn't due then.

Q. Did you pay your rent?

A. And I still had my electric bill and 'phone bill, but they hadn't come in yet when I left.

Q. You mean you only owed thirty-two dollars?

A. Then I owed my doctor bill but I don't know what I owed my doctor.

Q. How much money did you have in your possession when you received the sixty dollars?

A. I didn't have any money.

Q. You had no money at all?

A. I had probably three or four dollars. I didn't have really any money.

Q. Then you used—you started to use that money to live on, didn't you? A. No, I didn't.

Q. You mean you only had three or four dollars and you didn't touch any of the sixty dollars?

A. No, sir.

Q. What did you do with it? [120]

A. I just saved it because if I hadn't come up I

(Testimony of Rose Drucilla West Dill.)

would have sent it back because I hadn't made up my mind whether I would come up or not.

Q. You didn't touch any part of it?

A. No, sir, I didn't.

Q. You didn't touch any part of it until the thirteenth? A. Until I started up.

Q. You mean you had the sixty dollars intact when you came to the airport to buy the airline ticket?

A. Yes, all but fifteen dollars that I had given just of that to a lady that had my baby, and then I brought those people and filled their car up just as we left the house.

Q. How much did you pay them?

A. I filled the car up with gas. It was right close to five dollars for the tank of gas.

Q. You spent twenty dollars out of the sixty dollars?

A. I don't remember what the change was.

Q. And you hadn't touched the sixty dollars all week? A. No, sir.

Q. And you hadn't used it to buy drinks or [121] anything? A. No, sir, I saved it.

Q. Did you put it in the bank?

A. No, just put it in a little box in the bed room where I put change in.

Q. Did you borrow any money that week from anybody?

A. Did I borrow any money? No, sir.

Q. You didn't borrow from a soul?

A. No.



(Testimony of Rose Drucilla West Dill.)

Q. Was anybody suing you for any bills down there?      A. No.

The Court: The Court will sustain an objection. You are just trying to confuse the witness on things that haven't any bearing. Now, let's move along.

By Mr. Volinn:

Q. Now, you never planned on marrying Mr. Berg; that is your testimony, isn't it?

A. No, sir, we hadn't talked about marriage.

Q. At any time?      A. No, sir.

Q. And when—you did go over to Mr. Berg's house though on a date? [122]

A. Call at his house?

Q. Yes.

A. Yes, sir, I have been to his mother's house.

Q. And you saw his mother?

A. Yes, I saw her.

Q. And step-father?      A. Yes, sir.

Q. And they never led you to understand that they thought you were going to get married, did they?      A. No, sir.

Mr. Guterson: I will object to what anybody understood.

The Court: Objection sustained.

By Mr. Volinn:

Q. Did they ever say to you that they expected you two to get married?      A. No, sir.

The Court: Cross examination should be within the scope of direct examination. Some of this went in on cross examination before by Mr. Kosher. I will not permit cross examination on cross examination.



(Testimony of Rose Drucilla West Dill.)

Now, get back to the direct if you want to cross examine. [123]

Mr. Volinn: If I may respectfully state to the Court, I believe that——

(Whereupon, there was a brief pause.)

Mr. Volinn (Continuing): ——I am cross examining on behalf of the Defendant Berg. I realize it may be repetitious and I apologize for that.

The Court: I understand that, Mr. Volinn. I didn't mean to unduly restrict your cross examination, but cross examination on the part of Mr. Kosher on matters that may not have been objected to but not within the scope doesn't permit cross examination in Federal Court.

Mr. Volinn: Well, I would like to continue for a while longer, if I may.

By Mr. Volinn:

Q. Coming back to these men that you had acts of intercourse with, the three men; the first one, as I understand, that you had an act of intercourse with was Thursday afternoon or Wednesday afternoon?

A. It was Wednesday. I had the three men in the two days.

Q. Was the first one Wednesday afternoon?

Mr. Guterson: Your Honor, I think this [124] is repetitious.

The Court: This is on matters on direct examination. It may be repetitious but that is permissible.

Mr. Guterson: O. K.

(Testimony of Rose Drucilla West Dill.)

By Mr. Volinn:

Q. (Continuing): Was that Wednesday afternoon?

A. I had one the first day I got there and then two after midnight or in the next day. I had the three men in the two days there.

Q. Let me ask you this: About how old a man was the first one?

A. I don't know. He looked like he would be about thirty-five, I guess, or forty; something like that.

Q. And what type of complexion did he have?

A. He was a big fellow and red hair and dressed in a suit.

Q. Do you know his name?           A. No, sir.

Q. You don't know the names of any of them?

A. No, sir, I don't remember the names.

Q. Did you introduce yourself to him?

A. No, sir; Vicky introduced me to him. [125]

Q. Did Vicky give you his name?

A. She told me his name but I don't remember.

Q. You don't remember?

A. I don't pay no attention to names.

Q. And the second man, about how old was the second one?

A. He was about the same age; about the same.

Q. Did you have—was he also introduced to you by Vicky?

A. Yes, sir. She introduced me to them. I don't remember what their names were, though. I never paid any attention.

(Testimony of Rose Drucilla West Dill.)

Q. Did Mr. Berg engage in any of these introductions?

A. You mean introduce me to any of the *buys*?

Q. Yes.            A. No, sir.

Q. Was he around when they came in?

A. He was there but back in one of the bedrooms.

Q. And the third man, you don't remember anything about his name?            A. I don't remember.

Q. So then you don't remember his looks in particular?            A. No.

Mr. Volinn: I have no further questions.

Mr. Kosher: May I ask one more question, please?

#### Cross Examination

By Mr. Kosher:

Q. Do I understand you to say there is one house on one side of Mrs. Heller's house but on the other side there is no house?

A. As best I remember, when you drive in there is no house on the right but there is one on the left. I know Mrs. Keating's house was on the left as you go in.

Q. You were there about three days; did you go outside sometime?

A. I didn't go outside only a couple of times I was out in the front.

The Clerk: Defendant's Exhibit A-1 marked for identification.

(Defendant's Exhibit A-1 marked.)

(Testimony of Rose Drucilla West Dill.)

By Mr. Kosher:

Q. Showing you what has been marked for [127] identification as Defendant's Exhibit A-1, can you tell me what that is?

A. Yes, this is Vicky's house here.

Mr. Guterson: I didn't hear that.

By Mr. Kosher:

Q. Can you recognize that picture? You can answer that "yes" or "no". A. Yes.

Q. What is it?

A. That is Vicky's home there.

Q. What is on either side of it?

A. Well, I had never noticed this over here. We drove in here, but I know this house in here.

Mr. Kosher: We offer Defendant's Exhibit A-1.

Mr. Guterson: I have no objection.

The Court: Mr. Volinn, have you seen that?

Mr. Volinn: Yes, your Honor.

The Court: A-1 may be admitted.

(Defendant's Exhibit A-1 admitted.)

Mr. Guterson: Does that complete it?

Mr. Kosher: That is all.

The Court: Do you have redirect? [128]

Mr. Guterson: Just briefly.

### Redirect Examination

By Mr. Guterson:

Q. On Saturday afternoon after you left Mrs. Heller's home you said you went to the hotel and spoke to her on the telephone; is that correct?

A. Yes, sir.

(Testimony of Rose Drucilla West Dill.)

Q. Did you recognize her voice on that occasion?

A. Yes, sir, I knew it was her voice when I heard it.

Q. The first time that you spoke on the 'phone to Mr. Berg on the early Sunday morning call when you were in Los Banos and received a call from him, did you also talk to someone on the 'phone besides Mr. Berg? A. I talked to Vicky.

Q. Did you recognize the voice you spoke to on that first Sunday morning as the same voice you spoke to on the Saturday afternoon after you left the Heller home?

A. Yes, sir, it was the same lady. I knew it was her.

Q. When you arrived at the airport on the early morning of April 13th and you called Adams [129] 5680—

A. (Interposing): Yes, sir.

Q. (Continuing): —did you also speak to a woman on that occasion?

A. Yes, sir, she answered the 'phone.

Q. Was that the same voice? A. Yes, sir.

Q. Did you recognize it?

A. Yes, sir, I knew her voice when I heard it.

Q. Now, redirecting your attention back to the early Sunday morning call, the first long distance call you received when you spoke to the woman whose voice you recognized from your later meeting with her, what conversation did you have with her?

A. The first time?

Q. The first call on that early Sunday morning;

(Testimony of Rose Drucilla West Dill.)

what conversation did you have with a lady named Vicky?

A. She talked to me and she said, "Are you going to come up? Teddy told me about you. Why don't you come on up?"

Q. What did you say?

A. I told her then I would. I said, O. K., I [130] would come up.

Q. Did you have any other conversation with her on that conversation?

A. Then she said I could stay at the house with her and I didn't have to stay downtown, or nothing. I could stay right there and I didn't have to worry about anything.

Q. Did you ever talk with this woman again on another of the long distance telephone calls from Seattle to Los Banos?

A. One time after that when Teddy called I talked to her.

Q. All right; what conversation did you have on that occasion?

A. She asked why I didn't come up.

Mr. Kosher: Just a minute. I object unless the time is fixed in the second conversation.

By Mr. Guterson:

Q. Do you remember how long after the first long distance call this was?

A. Until they called again?

Q. The second long distance call?



(Testimony of Rose Drucilla West Dill.)

A. It was a couple of days after the first one.

Q. And you were in Los Banos when you [131] received this call?

A. Yes, sir, at my number.

Q. Relate the conversation between you and Vicky on that occasion.

A. She wanted to know why I didn't come up and I said I didn't have the money and she said they would send me the money and, "If you don't have your clothes ready, just throw them in a suit case and you can straighten them out after you get here."

Q. After you arrived at the airport in Seattle Wednesday morning, the 13th of April, you spoke to Vicky again over the telephone from the airport?

A. Yes, sir.

Q. Will you tell us what conversation you had with Vicky on that occasion?

A. She told me they was going—they couldn't come to meet me because they didn't have a car and she said to get a cab and come to the house and she gave me the address but I couldn't remember the address and I didn't write it down and I called back again and she repeated the address to me again and I wrote it down so that I would know the address. I had the number but not the address.

Q. And then you did get a cab and go out to [132] the house?

A. Yes, sir.

Mr. Guterson: I have nothing further.

(Testimony of Rose Drucilla West Dill.)

Recross Examination

By Mr Kosher:

Q. Now, Miss West, on your first conversation that you claim you had with Mrs. Heller, she at no time told you she wanted you to come to Seattle for the purpose of practicing prostitution, did she?

A. She didn't use the words of that but she told me of her place and everything and said it was good money.

Q. What did she say exactly; what were her exact words on that first conversation? Can you tell me that?

A. I don't know whether I can tell exact words or not but in talking she said, "Why don't you come up and try it." She said everything was O. K. "You can stay at the house with me. It is good and you can stay right here. Come and give it a try."

Q. She just picked up the telephone and said, "Stay with me. Everything is all right and if you don't like it you——"

A. (Interposing): She said, "How are you? Teddy [133] was telling me about you."

Q. What else did she say?

A. Why didn't I come up.

Q. Did she say, "Why don't you come up?"

A. Yes; she said, "Why don't you come up here?"

Q. What did you say to that?

A. Then I told her O. K., I would come up.

Q. And what did she say?

(Testimony of Rose Drucilla West Dill.)

A. They told me the plane, if I leave on the plane they would meet me.

Q. When you say "they"—

A. (Interposing): Well, I had talked to both of them on the 'phone.

Q. Both at the same time?

A. On the same 'phone call.

Q. I am just interested in what Mrs. Heller is supposed to have said to you; did she say she would meet you?

A. They said—

Q. (Interposing): No, just she.

A. She said when I got to the airport to call the house and she would meet me at the airport.

Q. What else did she say?

A. That is about all.

Q. When did she tell you to come up here? [134]

A. She told me that over the 'phone.

Q. What exactly did she say?

A. That is exactly the way she said it; she said, "Things are all right; things are good."

Q. You had not said anything to her to invite that conversation?

A. No.

Q. She said, "Things are good, come on up."?

A. She said, "Things are all right."

Q. What other conversation did you have with her?

A. That is about all we talked about.

Q. Now, at no time did she tell you to get on the plane to come up here, that you could practice prostitution in her house after you got here, did she?

A. She didn't use the word of "prostitute".

(Testimony of Rose Drucilla West Dill.)

Q. All right.

A. But she said it was at her place and I stayed right there.

Q. She didn't say to you that you could stay with some men for thirty dollars and twenty dollars or fifty dollars, or anything like that?

A. No, she didn't tell me the prices over the 'phone. [135]

Q. And as I understand your testimony, you didn't know this woman before or didn't see her before?

A. Just talked to her over the 'phone.

Q. So far as you know, she didn't know who you were?      A. No, sir.

Q. Now, did you have anything to drink when you were talking to her on the telephone?

A. No, sir, I didn't.

Q. Were you sober at that time?

A. Yes, sir.

Q. What about on this second conversation, were you sober then?      A. Yes, sir.

Mr. Kosher: That is all.

Mr. Volinn: One further question.

### Recross Examination

By Mr. Volinn:

Q. Did you tell Mrs. Heller or anybody that you were just coming up for a week or ten days?

Mr. Guterson: Can we have this related to a 'phone call?

(Testimony of Rose Drucilla West Dill.)

By Mr. Volinn:

Q. (Continuing): On your 'phone calls, when [136] you were talking to Mrs. Heller, did you mention to her you were coming up for a week or ten days?

A. I didn't say how long I was going to stay, or nothing, over the 'phone. We never even talked about how long I would stay, or nothing.

Mr. Volinn: I have nothing further.

Mr. Guterson: I have nothing further.

The Court: That is all.

(Witness excused.)

The Court: Do you want to call another witness or take a recess?

Mr. Guterson: I have a short witness.

The Court: All right.

Mr. Guterson: Mr. Scarpete? [137]

### JOE SCARPETE

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

#### Direct Examination

The Clerk: State your full name and spell your last name, please.

The Witness, Joe Scarpete, S-c-a-r-p-e-t-e (spelling).

By Mr. Guterson:

Q. Just keep your voice up. What is your full name, sir?      A. Joe Scarpete.

(Testimony of Joe Scarpete.)

Q. What is your home address?

A. Box 427, Los Banos.

Q. Los Banos? A. Yes.

Q. How long have you lived in Los Banos?

A. All my life.

Q. Do you know Rose West? A. Yes.

Q. How long have you known her?

A. About three or four years.

Q. In April, 1955, did you own an automobile?

A. Yes.

Q. What kind of a car was it?

A. Black Pontiac, 1950.

Q. At that time how far did you live from where Mrs. West lived? A. Right next door.

Q. Did you ever have occasion to drive her from Los Banos to San Francisco, California?

A. Yes.

Q. Was anyone in the car besides you and Rose?

A. Yes.

Q. Who else? A. Tony and Pat Baffuna.

Q. Was it in the morning or evening?

A. In the evening.

Q. About what time did you leave Los Banos?

A. Between a quarter to eight and eight o'clock;  
I am not sure.

Q. Where did you go in San Francisco?

A. To the airport.

Q. Did you leave Miss West off? A. Yes.

Q. Where did you leave her off?

A. Right at the airport. [139]

Q. The entrance to the airport? A. Yes.



(Testimony of Joe Scarpete.)

Q. Did she have any luggage or baggage with her?      A. Yes.

Q. Did she take it with her?

A. No, she went in first and a porter came and got the luggage.

Q. And a porter came and got the luggage?

A. Yes.

Q. Where did Miss West go?

A. I don't know.

Q. She left the car?      A. Yes.

Q. Where did you and Mr. and Mrs. Baffuna go?      A. Back home.

Q. Back to Los Banos?      A. Yes.

Q. You arrived there later, or earlier, in the morning?      A. Yes.

Mr. Guterson: Nothing further.

The Court: Did she fill your car with gas? [140]

The Witness: Yes.

### Cross Examination

By Mr. Kosher:

Q. Was she sober at the time?      A. Yes.

Q. Do you know—could you tell—whether she had had anything to drink before you took her to the airport?

A. We stopped one place and had a beer before we got there.

Q. How much beer did you have there?

A. One bottle.

Q. Do you know whether or not she brought any liquor with her?      A. No.

(Testimony of Joe Scarpete.)

Q. You don't know whether she did or not?

A. No, I don't.

Q. You know Mr. Berg here, don't you?

A. Yes.

Q. You knew him in Los Banos? A. Yes.

Q. Now, did Rose tell you when you took her to the plane that she was coming up here to get married? A. No. [141]

Mr. Kosher: I think that is all.

Mr. Guterson: I have nothing further.

Mr. Volinn: I have no questions.

Mr. Kosher: No further questions.

The Court: No questions?

Mr. Volinn: No questions.

The Court: That is all.

(Witness excused.)

The Court: Do you have another short one?

Mr. Guterson: Yes. Mr. Baffuna? [142]

### TONY BAFFUNA

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

#### Direct Examination

The Clerk: State your full name and spell your last name, please.

The Witness: Tony Baffuna, B-a-f-f-u-n-a, (spelling).

By Mr. Guterson:

Q. Will you state your full name, sir?

(Testimony of Tony Baffuna.)

A. Tony Baffuna.

Q. And what is your home address?

A. Post—well, home address is Los Banos but post office box 427.

Q. In Los Banos? A. Yes.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Four.

Q. What kind of work do you do?

A. Truck driver.

Q. How long has your home been Los Banos?

A. All my life; about twenty-nine years. [143]

Q. Do you know Rose West? A. Yes.

Q. How long have you known her approximately?

A. Oh, about four or five years, maybe more.

Q. Did you ever drive in an automobile with Rose West from Los Banos to San Francisco, California? A. Yes.

Q. Do you recall approximately when that was?

A. That was a night in April.

Q. April of this year?

A. April of this year.

Q. And who else was in the car?

A. My wife and my cousin Joe.

Q. Joe is your cousin? A. Yes.

Q. What is your wife's name?

A. Patricia.

Q. The three of you and Rose West?

A. That is right.

Q. Who was driving? A. Joe. [144]

Q. Who was sitting in the front seat with him?

(Testimony of Tony Baffuna.)

A. Rose.

Q. And you and your wife in the back seat?

A. Yes.

Q. What time did you leave?

A. Eight o'clock.

Q. Where did you go in San Francisco?

A. Airport.

Q. Did you leave Rose off at the airport?

A. We parked in front of the airport and she got off.

Q. Did she have any luggage with her?

A. Yes.

Q. Did she take that with her or did somebody move it?

A. A porter came and got it a while later.

Q. Did you see where she went?

A. We pulled out as soon as the porter came and got her bags.

Q. About what time was that when you left her?

A. Around midnight or later.

Q. And did you return home?

A. That is right. [145]

Mr. Guterson: I have nothing further.

### Cross Examination

By Mr. Kosher:

Q. Did she tell you she was coming up to Seattle to get married? A. No, she never.

Q. Did she tell you what she was coming to Seattle for?

A. She didn't tell us she was coming to Seattle.

(Testimony of Tony Baffuna.)

Q. You don't know where she was going?

A. That is right.

Q. And you don't know whether she came to Seattle or not? A. That is right.

Q. Had she been drinking at all?

A. Not that I know of. I don't make acquaintance with anybody.

Q. Did you stop off at a tavern there for some beer?

A. Yes, we did. I never got off the car. Joe and Rose West got off at the Glow Worm at the other side of Redwood City.

Q. To go into a tavern? A. Yes. [146]

Q. How long were they there?

A. I believe about five or ten minutes at the most.

Mr. Kosher: That is all.

Mr. Volinn: I have no questions.

Mr. Guterson: Nothing further. Thank you.

The Court: That is all.

(Witness excused.) [147]

\* \* \* \* \*

### J. S. FUDIE

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

#### Direct Examination

The Clerk: Will you state your full name and spell your last name, please?

The Witness: J. S. Fudie, F-u-d-i-e (spelling).

(Testimony of J. S. Fudie.)

By Mr. Guterson:

Q. Will you state your full name, sir?

A. J. S. Fudie.

Q. And what is your home address?

A. 324 Bellvue North, Seattle.

Q. What is your work, sir?

A. I am an operations manager for Western Union Telegraph Company.

Q. How long have you been employed by Western Union?

A. Thirty-six years.

Q. How long have you been operations manager for the Seattle office?

A. For the last hitch since 1950. I was here 1943 to 1949, and then 1950 to the present date.

Q. What in general are your duties? [150]

A. In my occupation as operations manager I supervise, direct and coordinate all operating functions in this area.

Q. What is your position with regard to records and telegrams that originate and terminate in the Seattle area?

A. I am the custodian.

Q. Pursuant to my request and subpoena did you bring a money order application with you, sir?

A. Yes.

Q. May I have it?

A. (Witness hands document to counsel.)

The Clerk: Plaintiff's Exhibit 2 marked for identification.

(Plaintiff's Exhibit 2 marked.)



(Testimony of J. S. Fudie.)

By Mr. Guterson:

Q. I now hand you what has been marked for identification as Plaintiff's Exhibit 2 for identification purposes only. Can you, Mr. Fudie, simply tell us what that is?

A. That is a money order application.

Q. What date does it bear?

A. April 6, 1955.

Q. Did that originate in the Seattle office? [151]

A. It did.

Q. Are you the custodian of that record?

A. That is right.

Q. Is this a record kept in the ordinary court of Western Union's business? A. Yes, sir.

Q. Is that the ordinary type of application one would make out to apply for a Western Union money order?

A. That is our standard form, yes.

The Court: What is the number of that?

Mr. Guterson: This is Plaintiff's Exhibit 2. I will offer Plaintiff's Exhibit 2 at this time, your Honor.

Mr. Kosher: Well, your Honor, on behalf of the Defendant Victoria Heller I will object on the grounds it is hearsay as to her and it is not connected up as having been sent by either one of these defendants.

Mr. Volinn: I will object to it on the same grounds and I will object further. I don't think that presently it is relevant. There is no showing as to the fact that it relates to either one of the defend-

(Testimony of J. S. Fudie.)

ants, and the Defendant Berg in particular; and for the further ground it is not such a [152] record as contemplated by the regular form business record.

The Court: Is Exhibit 1 for identification in?

Mr. Guterson: No, I haven't offered that at this stage.

The Court: Well, I think as a business record it is established.

Mr. Guterson: Yes, your Honor.

The Court: Its relevancy may not be established yet.

Mr. Guterson: I will go into it, your Honor.

The Court: All right.

Mr. Guterson: With this and the next witness.

The Court: All right. I will——

Mr. Guterson (Interposing): I am not offering 1, just 2.

The Court: Well, I will sustain the objection at this time, without indicating otherwise that it may be admissible.

Mr. Guterson: May I inquire further with regard to it?

The Court: You may. [153]

By Mr. Guterson:

Q. Now, I will direct your attention once again, if I may, Mr. Fudie, to Plaintiff's Exhibit 2 for identification purposes. When a money order application such as that is made out here in Seattle what course does it go through; what are the operations?

A. Well, when the money order application is

(Testimony of J. S. Fudie.)

made out in Seattle it is processed and sent to the operations room and the text in this block here is transmitted to the destination point by telegraph.

Q. And is it transmitted to the Western Union Office nearest to the destination point?

A. In this case, yes; transmitted to Fresno, California.

Q. That particular money order? A. Yes.

Q. Now, is there a Western—a regularly constituted Western Union Office in Fresno, California?

A. There is, yes.

Q. Do you know whether or not there is such an office in Los Banos, California?

A. Not a money order office.

Q. For the transmission of money, do you [154] have an agency?

A. We have an agency in Los Banos.

Q. Who is that?

A. I believe it is—

Mr. Guterson (Interposing): I will mark this.

The Clerk: Plaintiff's Exhibit Number 3 marked for identification.

(Plaintiff's Exhibit 3 marked.)

By Mr. Guterson:

Q. I will now hand you Plaintiff's Exhibit 3 for identification purposes only. Can you identify it and tell us what that is?

A. That is the Western Union draft made out on the strength of this application that was telegraphed to Fresno, California.

Q. Now, in your duties as operations manager

(Testimony of J. S. Fudie.)

of the Seattle office, are you the custodian of that record?

A. That is right; yes.

Q. Is that an ordinary business record when the destination point on an application does not have a regularly constituted Western Union office?

A. No. In cases like this—— [155]

Q. (Interposing): Yes?

A. (Continuing): ——all drafts come back and are attached to the application which completes the transaction.

Q. I see. In your records, were those two documents, Plaintiff's Exhibit 2 and Plaintiff's Exhibit 3 attached in your records?

A. They were, yes.

Q. And when brought into Court pursuant to my subpoena they were attached?

A. They were attached.

Q. And they relate one to the other?

A. That is right.

Q. And what is the amount on the draft?

A. \$60.38.

Q. Who is it made out to?

A. To the American Trust Company.

Q. Is that an agency of Western Union Company?

A. That is a banking agent, yes, sir; banking agent.

Q. Connecting that with Plaintiff's Exhibit 2 for identification, can you explain the difference between sixty dollars and \$60.38?

(Testimony of J. S. Fudie.)

A. The thirty-eight cents is the fee we pay [156] our agent for handling the transaction for us.

Q. And your agent in this case is American Trust? A. That is right.

Q. Does it bear their stamp on the back?

A. Yes, it does.

Q. Now, at all times these matters have been under your control as custodian of the business records in the Western Union Office here in Seattle?

A. That is right.

Mr. Guterson: I believe that is all.

Mr. Kosher: No questions.

Mr. Volinn: No questions.

The Court: That is all.

Mr. Guterson: Thank you, Mr. Fudie.

The Court: Mr. Fudie may be excused too?

Mr. Guterson: He may.

Mr. Kosher: Yes.

Mr. Guterson: Will you wait in the anteroom a moment?

The Witness: Yes.

(Witness excused.)

Mr. Guterson: Will you call Mrs. Fick? [157]

### ETTA FICK

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Mrs. Etta Fick, F-i-c-k (spelling).



(Testimony of Etta Fick.)

Direct Examination

By Mr. Guterson:

Q. Will you keep your voice up please and state your full name very clearly for everyone to hear?

A. Mrs. Etta Fick.

Q. Where do you live, Mrs. Fick?

A. 9903 Des Moines Way.

Q. Is that here in Seattle? A. Yes, sir.

Q. Are you employed at the present time?

A. Yes, sir.

Q. By whom? A. Western Union.

Q. Here is Seattle? A. Yes, sir.

Q. How long have you been an employee of Western Union Company? [158]

A. About twelve years.

Q. And you were employed by them, were you, on the sixth of April of this year?

A. Yes, I was.

Q. And what shift do you work?

A. From five o'clock in the evening until one o'clock in the morning.

Q. And that is the shift you were working at that time? A. Yes.

Q. Now, I am going to hand you what has been marked as Plaintiff's Exhibit 2 for identification purposes, Mrs. Fick. I would ask you just to examine it. Do your initials appear on that exhibit?

A. Yes, they do.

Q. And what are they, as written? A. E. F.

Q. And what is the date on that exhibit?

A. April sixth.



(Testimony of Etta Fick.)

Q. Now, is that an ordinary application for Western Union money order? A. Yes, it is.

Q. And does your writing appear anywhere else on there besides your initials?

A. Yes, it does. [159]

Q. Can you tell us what else you have written on there?

A. Yes, "50", night letter; "Paid, April 6"; and the charges. There was "\$60.75" charges, "\$1.10" toll, "11c" tax, total "\$61.96." And then more.

Q. Go on.

A. "Fresno, California", and then "60", the figures in parenthesis, and the word "call" and the 'phone number.

Q. What 'phone number?

A. "Rose West, phone 2404."

Q. I see; now, did you wait on the person that made that application for money order?

A. Yes.

Q. That was in the ordinary course of your duties as an employee? A. Yes, it was.

Q. Now, the writing on there that is not yours, the pencilled writing, was that made by the applicant; was that made by the person who came in to ask for the money order?

A. Yes, it must have been.

Q. You waited on him? A. Yes.

Mr. Guterson: Before I ask the witness [160] to read this in, I will reoffer Plaintiff's Exhibit 2 at this time, your Honor.

Mr. Kosher: Your Honor, again on behalf of

(Testimony of Etta Fick.)

Victoria Heller I object as hearsay as to her and further on the ground it has not been established that these documents related to either one of these defendants. The sender of that telegram has not been identified as either one of these two defendants.

Mr. Volinn: I will likewise object on the same grounds. There has been no relationship shown to the Defendant Berg.

The Court: You still have Exhibit 1?

Mr. Guterson: No. I just had the first witness identify 1. I don't want to offer 1 yet. I can have her read it to tie it up.

The Court: Well, she can't read it, of course, until it is introduced.

Mr. Guterson: That is right.

Mr. Kosher: May I ask her just one question?

The Court: It seems to me these should come in as one.

Mr. Guterson: Offer them together?

The Court: When you get them all together.

Mr. Guterson: Fine.

The Court: I do not necessarily recognize the validity of the objection. However, I will not rule on it at this time but I suggest if you have any questions here you should ask them.

### Cross Examination

By Mr. Kosher:

Q. Now, Ma'am, so far as you know, I could have sent that telegram, isn't that right?

A. If you can write the same writing.

(Testimony of Etta Fick.)

Q. Now, isn't it a fact I could have had somebody write that telegram and brought it in to you and paid you \$61.38, or whatever it was, and you would have sent it on?

A. The person who wrote that out, I took their money and sent it.

Q. What you mean to say is that the person who came to the desk and handed you that document and gave you \$61.38, or whatever it was, is the person you got it from, is that right?

A. Yes.

Q. And you don't know who that person is?

A. No.

Q. You wouldn't recognize him in this court [162] room, would you?

A. Well, I wouldn't.

Q. You wouldn't be able to because there are so many people that come in all the time; is that right?

A. That is right.

Mr. Kosher: That is all. We renew our objection.

Mr. Volinn: And I renew mine.

The Court: The Court is reserving ruling.

Mr. Guterson: I understand. Are there any further questions?

Mr. Kosher: No further questions.

Mr. Volinn: No further questions of this lady.

Mr. Guterson: You have nothing further, Mr. Volinn?

Mr. Volinn: No.

Mr. Guterson: Thank you, very kindly.

(Testimony of Etta Fick.)

The Witness: All right.

(Witness excused.)

Mr. Guterson: Mr. Warren? [163]

HERBERT WAYNE WARREN

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Herbert Wayne Warren.

The Clerk: W-a-r-r-e-n (spelling)?

The Witness: Yes.

By Mr. Guterson:

Q. Will you state your full name?

A. Herbert Wayne Warren.

Q. What is your home address?

A. 7486 East American, Fowler, California.

Q. How far is Fowler, California, from Fresno, California?

A. Eight miles.

Q. Are you employed at the present time?

A. Yes, sir, I am.

Q. And where do you work?

A. Western Union in Fresno.

Q. Western Union in Fresno? A. Yes, sir.

Q. How long have you been working for [164] the Western Union Company, sir?

A. Ten months.

Q. You came to Seattle pursuant to my request?

A. Yes, sir.

(Testimony of Herbert Wayne Warren.)

Q. I am now going to hand you what has been marked as Plaintiff's Exhibit 3 for identification purposes only. Will you examine that, sir? Does your signature appear thereon?

A. Yes, sir, it does.

Q. Did you sign that personally?

A. Yes, sir.

Q. And what is that document?

A. It is a Western Union money order.

Q. A draft?

A. Yes, sir, a draft to the American Trust Company in Los Banos.

Q. Did you make that out in the ordinary course of business in the Fresno Office?

A. Yes, sir.

And on what information, or pursuant to the receipt of what information, did you make it out?

A. On a money order draft that we received from Seattle. [165]

Q. I will hand you what has been marked as Plaintiff's Exhibit 2. Is this similar, or have you seen a copy of that before, if you know?

A. Yes, sir, I have.

Q. Now, is that the document which you received which—upon the basis of which you made out your draft and forwarded it to Los Banos?

A. Yes, sir, we received a duplicate of this copy.

Q. I see; now, who did you make the draft payable to, the draft you made out?

A. This is payable to the American Trust Company.



(Testimony of Herbert Wayne Warren.)

Q. And in what amount? A. \$60.38.

Q. Now, when was that transmitted from Fresno to Los Banos?

A. The draft I hold here was transmitted by mail.

Q. Do you yourself remember making it out and preparing it for the mail?

A. Yes, sir. We have a form. We make it out and put it in an envelope to be mailed the following day.

Q. What date appears on that exhibit? [166]

A. April 7th.

Q. Now, that is an ordinary business document made out by your office, is that correct, sir?

A. Yes, sir, it is.

Q. Examining once again the face of that draft, the typed in matter, the payee and so forth, are those typed in by your office?

A. Yes, sir, they are.

Q. Now, referring them to the information that is typed on the draft which you have signed, who does it have marked below as the payee?

A. Rose West.

Q. And who is the sender? A. Ted Berg.

Mr. Guterson: I have nothing further.

Mr. Kosher: I have no questions.

The Court: That is all.

Mr. Guterson: Thank you, Mr. Warren.

(Witness excused.)

Mr. Guterson: Mr. La Rossa. [167]



LOUIS LA ROSSA

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Louis La Rossa, L-a R-o-s-s-a (spelling).

By Mr. Guterson:

Q. Will you state your full name, sir?

A. Louis La Rossa.

Q. What is your home address?

A. 920 J Street, Los Banos, California.

Q. What is your employment?

A. Banking, American Trust Company.

Q. How long have you been an employee of the American Trust Company?      A. Twenty years.

Q. That is American Trust Company of Los Banos, California?

A. At Los Banos, California, yes.

Q. What is your position or title there?

A. I am assistant cashier and most of my work is loaning officer and I spend some time on operations. [168]

Q. I see; now, pursuant to my request did you bring an instrument from Los Banos?

A. Yes, sir, I did.

Q. May I have it, sir?

A. (Witness handed document to counsel.)

(Testimony of Louis La Rossa.)

The Clerk: Plaintiff's Exhibit 4 marked for identification.

(Plaintiff's Exhibit 4 marked.)

By Mr. Guterson:

Q. Are you a custodian of the records of the American Trust Company?

A. Yes, sir, I am.

Q. What relationship does the American Trust Company of Los Banos have to the Western Union Company?

A. We act as agent for them in paying and receiving money orders.

Q. What is the central, or closest regular Western Union Office to Los Banos?

A. Fresno, California.

Q. I will hand you what has been marked as Plaintiff's Exhibit 4 for identification purposes only. Can you just tell us what that is? [169]

A. Yes. This is a wire, money order wire, sent out of Seattle, Washington, and that is to pay sixty dollars——

Q. Don't say what it says. Out of Seattle?

A. Out of Seattle.

Q. Was it transmitted through the Fresno Office of Western Union? A. Yes, sir.

Q. Does it bear Fresno identification?

A. Yes, sir, it does.

Q. Was that received by your office?

A. Yes, sir, it was.

Q. Is there some marking on there to show that it was? A. Yes, sir.

(Testimony of Louis La Rossa.)

Q. And that has been retained by the American Trust Company? A. Yes, sir, it has.

Q. Is that kept in their files and records?

A. Yes, sir, it has.

Q. Considered an official business document of your firm?

A. Yes, sir, a permanent record.

Q. I will now hand you what has been marked as Plaintiff's Exhibit 1 for identification purposes. [170] Will you examine that? Can you simply tell us what that is?

A. Yes. This is an entry to the general ledger. In other words, that is the only way we could carry this. When we pay out the money is in accounts receivable, so that that is what that is.

Q. Do you have an accounts receivable fund for your work, sir?

A. Yes, sir, to take care of things like this, Western Union wires.

Q. Is that an official business record of American Trust Company? A. Yes, it is.

Q. That is retained by your company?

A. Yes, sir.

Q. And it has been retained in your files?

A. Yes, sir.

Q. Now, does this document, Plaintiff's Exhibit 1 for identification, show who signed as recipient of the sixty dollars? A. Yes, sir.

Q. And who does it show? A. Rose West.

Q. Now, do your initials, or does your mark, appear anywhere on that instrument? [171]

(Testimony of Louis La Rossa.)

A. Yes, sir, it does. It is an authorized signature.

Q. Can you point that out?

A. (Witness pointed to document.)

Q. The bottom writing?

A. The bottom writing.

Q. And what does that say?                      A. La Rossa.

Q. Do the initials or name of some other employee of your firm appear thereon also?

A. Yes, sir, it does.

Q. I will hand you again Plaintiff's Exhibit 4 for identification. Does this contain the initials of any—of some employee of the American Trust Company?                      A. Yes, sir, it does.

Q. I see. Now, referring you once again to Plaintiff's Exhibit 4, which is in front of you, what authority does the American Trust Company have upon receipt of something like that in order to pay the alleged payee?

A. We have an agreement with the Western Union, since their office is so small in Los Banos that they do not have facilities for carrying enough money there to pay these wires out—we have the [172] authority upon receipt of this wire to pay to the—to whomever it is payable to.

Q. And that is done as an ordinary thing?

A. That is done as an ordinary thing.

Q. This document, Plaintiff's Exhibit 1, is that evidence of the actual payment?

A. Yes, sir, it is.

Q. And is the name—is the signature of the

(Testimony of Louis La Rossa.)

payee of 1 the same person as the person alleged to be the payee on 4? A. Yes, sir.

Q. And both of these documents have been retained by your firm? A. Yes, sir.

Mr. Guterson: I have nothing further.

Mr. Kosher: I have no questions.

Mr. Volinn: I have a question.

### Cross Examination

By Mr. Volinn:

Q. Mr. La Rossa, you testified you spent most of your time at the bank as a lending officer?

A. Yes, sir.

Q. You interview people and discuss loans with them, and so forth? A. Yes, sir. [173]

Q. So far as—how about the custody of the records there, you do have a person at the bank employed who is in charge of records?

A. Well, I am one of them.

Q. And you have others?

A. Well, of course, the filing is done maybe by others but we go through them and see that they are in proper order and so on.

Q. Is there anyone at the bank who is officially designated as being a record custodian?

A. No, there isn't.

Mr. Volinn: I have no further questions.

### Redirect Examination

By Mr. Guterson:

Q. You are one of the custodians?

(Testimony of Louis La Rossa.)

A. I am considered one of them, yes.

Mr. Guterson: I see. I have nothing further.

Mr. Kosher: No questions.

Mr. Guterson: Thank you.

(Witness excused.)

Mr. Guterson: Call Mrs. Etcheverry. [174]

### ELLENA ETCHEVERRY

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

#### Direct Examination

The Clerk: Will you state your name and spell your last name, please?

The Witness: Mrs. Ellena Etcheverry, E-t-c-h-e-v-e-r-r-y (spelling).

By Mr. Guterson:

Q. Will you speak very loudly, please? What is your full name?

A. Mrs. Ellena Etcheverry.

Q. And what is your home address?

A. Route 1, Box 333, Los Banos, California.

Q. How long have you lived in Los Banos?

A. All my life.

Q. Are you employed at the present time?

A. Yes, I am.

Q. Where at?

A. The American Trust Company.

Q. What kind of work do you do in the American Trust Company?      A. A note teller.



(Testimony of Ellena Etcheverry.)

Q. Excuse me? [175] A. A note teller.

Q. How long have you been employed by the American Trust Company?

A. Twelve years.

Q. What, in general, are your duties as a note teller? A. Well, I take loan payments.

Q. Wait on customers, do you?

A. Some, yes.

Q. I am going to hand you what has been marked as Plaintiff's Exhibit 4 for identification and I want you to take a look at that and then tell us whether or not your name or initials appear thereon? A. They do.

Q. Will you speak loudly? A. They do.

Q. What did you write on there?

A. That I called her, and my name.

Q. Excuse me?

A. That I called her and my name.

Q. Your name appears thereon? A. Yes.

Q. And you say you made a call and jotted that down also? [176] A. I did.

Q. Did you make a call to the person written on there as the payee? A. Yes, I did.

Q. Did you speak with her?

A. When I waited on her.

Q. When you called did you actually talk to her? A. Yes, I did.

Q. Now, I will show you what has been marked as Plaintiff's Exhibit 1 for identification. Will you examine that? Does your name or initials appear thereon, Ma'am? A. Yes, they do.

(Testimony of Ellena Etcheverry.)

Q. Did you write anything else on there besides your name?      A. No, just typed on here.

Q. Speak up.

A. Just typed on here who the wire was sent to, by whom, and where.

Q. That is in connection with your record, is that correct?      A. That is correct.

Q. Now, were you the one that actually waited on the lady who came in to get the sixty dollars [177] pursuant to that order?      A. Yes, I did.

Q. Do you recognize that lady in the court room now; will you look around and see if you can see her?      A. No.

Q. Will you look all through the court room?

A. Now, I do.

Q. Will you—where is she sitting?

A. In the second row, the girl with the black suit.

Mr. Guterson: Will you stand, please?

By Mr. Guterson:

Q. Is that the girl?      A. Yes, it is.

Q. Did she sign her name when you gave her the sixty dollars?      A. Yes, she did.

Q. Was that in your presence?      A. Yes.

Q. Now, right under where you signed your name this other writing that is done by Mr. La Rossa is, is it?      A. That is right.

Q. And these two documents have been kept by your company so far as you know, is that it?

A. That is right.

Q. On Plaintiff's Exhibit 4 where you wrote

(Testimony of Ellena Etcheverry.)

your name you wrote the word "call" underneath, is that correct; is that your writing? A. Yes.

Q. And right above that the stamp "April 7", was that made by your office? A. Yes.

Q. Now, the stamp on this document, Plaintiff's Exhibit 1, "April 7", was that made by your office?

A. Yes, it was.

Q. Does that indicate the date the sixty dollars was paid? A. Yes, it does.

Q. And the signature was made in your presence, is that correct? A. Yes.

Q. Did you actually give the lady the sixty dollars? A. Yes, I did.

Q. And was that done in cash? A. Yes.

Mr. Guterson: I have nothing further. [179] Well, just one minute. At this time, if your Honor please, I will offer Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4.

Mr. Kosher: Your Honor, on behalf of the Defendant Victoria Heller I object to them on the grounds there is no connection between these exhibits and Mrs. Heller and no showing she had anything to do with the sending of the money. She is in no way identified with having anything to do with any of these exhibits and they are hearsay as to her.

Mr. Volinn: I will object to them on the grounds there is no showing that these documents are related to the Defendant Berg.

The Court: The Court will overrule the objec-

(Testimony of Ellena Etcheverry.)

tions as to Berg. What is the Government's position as to the Defendant Heller?

Mr. Guterson: I think the documents are properly in evidence and a precautionary instruction should be given the jury.

The Court: You agree they are not to be considered except with relation to the Defendant Berg?

Mr. Guterson: Oh, certainly. That is [180] the sole purpose.

The Court: Exhibits 1, 2, 3 and 4 may be admitted. They are to be considered with respect to the Defendant Berg; not as to the Defendant Heller.

(Plaintiff's Exhibits 1, 2, 3 and 4 admitted.)

Mr. Guterson: Yes, your Honor.

Mr. Kosher: May I cross examine this lady?

Mr. Guterson: Just one moment.

If your Honor please, with the Court's permission, now that these are in evidence, would it be proper for me to read them instead of asking the witness?

The Court: Yes, you may read them. He may have some questions.

Mr. Kosher: Yes, I have.

### Cross Examination

By Mr. Kosher:

Q. You say you remember this lady sitting next to the gentleman sitting on the corner there?

A. Yes, I do.

Q. Will you tell me whether or not her hair is the same color today as the day you allegedly [181]

(Testimony of Ellena Etcheverry.)

gave her the sixty dollars? A. No, it isn't.

Q. What color was the hair of the lady you gave the money to? A. Blonde.

Q. Platinum or peroxide blonde?

A. Peroxide, I guess.

Q. And the color of her hair now is what?

A. I would say red.

Q. Did you recognize the person?

A. I recognize the face.

Q. Did you ever know her before you gave her the sixty dollars? A. No.

Q. Did you ever see her before? A. No.

Mr. Kosher: I think that is all.

Mr. Volinn: I have no questions.

Mr. Guterson: I have nothing further.

The Court: You may be excused.

(Witness excused.) [182]

\* \* \* \* \*

H. W. McCaffrey

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name and spell your last name, please?

The Witness: H. W. McCaffrey, M-c C-a-f-f-r-e-y (spelling).

By Mr. Guterson:

Q. Will you state your full name?



(Testimony of H. W. McCaffrey)

A. H. W. McCaffrey. M-c C-a-f-f-r-e-y (spelling).

Q. What is your home address?

A. 2323 Eyres Place, Seattle.

Q. What type of employment do you follow?

A. I am employed by the Pacific Telephone and Telegraph Company as chief special agent.

Q. How long have you been employed by the telephone company?      A. Since 1921.

Q. And you say your title at the present time is chief special agent?      A. That is correct.

Q. How long has that been your duty?

A. Since 1943. [185]

Q. Do you have any area over which you are chief special agent?

A. The Washington and Idaho area.

Q. What in general are your duties, Mr. McCaffrey, as chief special agent?

A. We handle claims for and against the telephone company, personal injuries, property damage, or criminal matters that might affect the company, and, in addition, I have the assignment of appearing and presenting records under subpoena.

Q. For the purpose of testimony in court you are custodian of 'phone company records, is that true?      A. Yes.

Q. For the Washington-Idaho area?

A. That is correct.

Q. And so designated by your company?

A. Yes.



(Testimony of H. W. McCaffrey)

Q. And you have testified in court in that manner on many other occasions?      A. Yes.

Mr. Volinn: I will object to the question and answer.

The Court: What is objectionable about that?

Mr. Volinn: Well, testifying—the business of testifying in court. The man testifies he is record [186] custodian. That is one thing but I believe there is some prejudice if this man appears in that capacity.

The Court: The objection may show. Overruled. By Mr. Guterson:

Q. Pursuant to my request contained in the subpoena, Mr. McCaffrey, did you bring with you records of or subscribable to Adams 5680?

A. I have.

Q. And according to the official 'phone company records relating to Adams 5680, who is listed as the subscriber or owner of that 'phone number?

A. It was Godfrey Heller.

Q. You say it was Godfrey Heller. When did that service terminate?

A. As of May 20th of this year.

Q. All right; then, as of the first of April until the thirteenth of April, 1955, at that time who was the subscriber of the listed 'phone number?

A. Godfrey Heller.

Q. Now, further in pursuance to my request did you bring into the court, Mr. McCaffrey, various toll tickets relating to long distance telephone calls which originated at Adams 5680?

(Testimony of H. W. McCaffrey)

A. Yes, I have. [187]

Q. You brought all of them as my subpoena requested? A. That is right.

The Clerk: Plaintiff's Exhibit 5, marked for identification.

(Plaintiff's Exhibit 5 marked.)

By Mr. Guterson:

Q. I now hand you what has been marked as Plaintiff's Exhibit 5 for identification purposes only, Mr. McCaffrey. Can you tell us what that is?

A. It is the record of a long distance call from Seattle, Adams 5680. Do you want the complete detail?

Q. From that are you able to determine whether or not the call originated at Adams 5680?

A. Yes, it did.

Q. Is there a marking on there which explains that to you? A. That is right.

Q. And who was the recipient of that call, what number?

A. It went to Los Banos, California, 2404.

Q. Is there a date on that?

A. April 3, 1955. [188]

Q. Is there a time that the call was put through marked on the toll ticket? A. 6:22 a.m.

Q. Does that ticket indicate the length of time that the conversation took?

A. It was a twelve minute conversation.

(Whereupon there was a brief pause.)

Mr. Guterson: I will offer plaintiff's Exhibit 5, your Honor.

(Testimony of H. W. McCaffrey)

Mr. Kosher: If your Honor please, I object to that Exhibit on the grounds there has been no connection shown between the defendant Heller and that Exhibit. This telephone number now was apparently registered to a man by the name of Godfrey Heller. There is no showing that this telephone call, if there was one made, went to the complaining witness in this case.

The Court: Well, the numbers will appear thereon and I think it is a matter for the jury to determine under the evidence here.

Mr. Volinn: I will object also, your Honor, there being no relationship shown as to the defendant Berg.

The Court: You make the same objection?

Mr. Volinn: Yes.

The Court: The objections may be shown as to [189] both defendants. Objections overruled. It is admitted.

(Plaintiff's Exhibit 5, admitted.)

The Court: This conversation was on April 3. Is this the conversation had where allegedly the defendant Heller also spoke?

Mr. Kosher: No.

Mr. Guterson: Yes. This is the first conversation, Sunday morning, April 3, 6:22 a.m. as testified to by the government's witness, according to the first witness of the government. She testified she talked to both people.

The Court: On that conversation?

Mr. Guterson: Yes.

(Testimony of H. W. McCaffrey)

The Court: It is admitted then as to both.

The Clerk: Plaintiff's Exhibit 6 marked for identification.

(Plaintiff's Exhibit 6, marked.)

Mr. Volinn: Excuse me, your Honor, also if the Exhibit has been admitted already I would like to offer another objection to the Exhibit just admitted and I assume the record will show. I would also object for the following ground: it has not been shown that Mr. McCaffrey is the qualified custodian of these records. The statement was that he is the custodian for the purpose of appearing [190] in court and I take it that does not mean he is custodian of the records as such, and I would object also that he is not qualified to testify as to what they are.

The Court: Mr. McCaffrey, do I understand that you have been designated by your company as a custodian of these records?

The Witness: For the purpose of answering subpoenas duces tecum, yes, which designation was given by Mr. George F. Dean, vice-president and general manager.

The Court: Do you have special authority on each occasion?

The Witness: General authority.

The Court: General authority?

The Witness: Yes, sir.

The Court: From whom did you secure these records?

The Witness: From the Commercial Record Office.

(Testimony of H. W. McCaffrey)

The Court: And that is——

The Witness (Interposing): In Seattle.

The Court (Continuing): ——in Seattle? Give us the mechanics of it.

The Witness: Upon learning that these toll records were to be subpoenaed I asked our commercial people to send me the general toll records involved and I have had them in my custody since that time. [191]

The Court: And you made that request pursuant to the authority given you by the general manager or local manager of the telephone company here, your superior?

The Witness: Yes, sir, our general manager.

The Court: Objection overruled.

Mr. Kosher: Exception on behalf of the defendant Heller.

By Mr. Guterson:

Q. I now hand you, sir, what has been marked as Plaintiff's Exhibit 6 for identification purposes only. Can you tell us what that is?

A. This is a record of a toll—long distance telephone call made April 10, 1955, 7:23 p.m. from Adams 5680 to Los Banos, California, 2404.

Q. The date again, sir, is what?

A. April 10, 1955.

Q. Does that show the length of time of the conversation?

A. A six-minute conversation.

(Whereupon, there was a brief pause.)



(Testimony of H. W. McCaffrey)

Mr. Guterson: I offer Plaintiff's Exhibit 6, your Honor.

Mr. Volinn: I will object again on the same grounds, your Honor, that no relationship is shown and, [192] too, that Mr. McCaffrey is not qualified to testify as to these records.

Mr. Kosher: I object on behalf of the defendant Heller on the ground there is no connection between this Exhibit and the defendant Heller and upon the ground no proper foundation has been laid for the asking of this question in relation to the defendant Heller.

The Court: As to the defendant Heller?

Mr. Kosher: I beg pardon.

The Court: As to the defendant Heller?

Mr. Kosher: As to the defendant Heller.

The Court: It appears to me that a telephone call made on the tenth apparently was not a conversation with the defendant Heller, and, therefore, objection is overruled as to the defendant Berg and admitted solely as to the defendant Berg.

Mr. Kosher: And not as to Heller?

The Court: And not as to Heller.

(Plaintiff's Exhibit 6, admitted.)

The Clerk: Plaintiff's Exhibit 7 marked for identification.

(Plaintiff's Exhibit 7, marked for identification.) [193]

By Mr. Guterson:

Q. I now hand you what has been marked Plaintiff's Exhibit 7 for identification purposes, Mr. Mc-



(Testimony of H. W. McCaffrey)

Caffrey. Will you examine that and tell us what that is, sir?

A. That is a record of a long distance call placed April 12, 1955, 10:02 a.m. from Adams 5680 to Los Banos, California, 2404.

Q. What is the time that that call was originally placed? Does that appear?

A. It was placed 10:02 a.m.

Q. Can you tell from examining that proposed Exhibit if and what time the 'phone call was completed?

A. It was completed about 5.45 p.m.

Q. 5:45 in the afternoon on that same date, April 12?

A. That is right.

Q. Can you tell the length of time of the conversation?

A. Yes, that was an eight-minute conversation.

(Whereupon, there was a brief pause.)

Mr. Guterson: I will offer Plaintiff's Exhibit 7, your Honor.

The Court: It is offered as to the defendant Berg only? [194]

Mr. Guterson: Yes, your Honor.

Mr. Volinn: I will again object that there is no relationship shown for one, and, second, that not only is the witness not shown to be properly qualified but actually that the qualifications are not adequate.

The Court: The same objections you made before?

Mr. Volinn: Yes, sir.

(Testimony of H. W. McCaffrey)

Mr. Kosher: The same objection as to Mrs. Heller.

The Court: It is not offered as to Heller. If you wish, you may examine the witness on voir dire if you wish to do so. However, on the showing now made the Court will overrule the objection as to the defendant Berg and admit it as to that defendant and not as to the defendant Heller.

(Plaintiff's Exhibit 7, admitted.)

By Mr. Guterson:

Q. Mr. McCaffrey, in general, a record of a 'phone call which is retained by your office in the form of one of these toll tickets, is that done, sir, only when the 'phone call is charged to a certain number?

A. The record is made, of course, in every instance and is filed against the account to which it is charged.

Q. All right; let us assume that a 'phone call is [195] made and paid for by putting money in the slot right away. Would there be any record of that?

A. Yes.

Q. Relating to that number?

A. The calling number.

Q. And the only 'phone calls that are charged to Adams 5680 would be found in your records pertaining to Adams 5680?      A. That is correct.

Mr. Guterson: That is all.

(Testimony of H. W. McCaffrey)

Cross Examination

By Mr. Kosher:

Q. Now, sir, if I were to go out in the hall and dial the long distance operator and tell her I wanted to call Los Banos, California, 2401, or whatever it was, and tell her my name is Godfrey Heller and to please charge it to Adams 5680, could I get such a call through?

A. You would probably if there were someone at Adams 5680 to okey such a charge.

Q. I see; then, in fact, the telephone call may have been made from this courthouse and yet charged to Adams 5680, isn't that right?

A. Not these three. These three particular calls were made from Adams 5680 according to our information.

Q. Assuming what I just told you, assuming I went [196] out in the hall and made such a telephone call, what would the records disclose?

A. The record would show a Main or Eliot telephone number call originating at that number. That number would be scratched out and just below that "Charged to Adams 5680". There would be two entries.

Q. Two entries instead of one? A. Yes.

Q. Now, the documents are made by human beings, are they not?

A. Our long distance operators.

Q. And there are mistakes made on those from time to time, aren't there?

A. It is a possibility.

(Testimony of H. W. McCaffrey)

Q. In fact, in your experience as a telephone man, you know people frequently complain that there are long distance telephone calls charged to their numbers that they did not make?

A. No, that would not be my experience; no, sir.

Q. That has not been your experience?

A. No, sir.

Q. Now, did you check to see how many other telephone calls during the period of April 3 to April 12 were made from Adams 5680 to the number down in Los Banos, California? [197]

A. I have the records here.

Q. *There many calls*, isn't that right?

(Whereupon, there was a brief pause.)

A. I wonder if you would give me those dates again, please.

Q. From April 3 to April 12.

A. I show one other call made on April 12 from Adams 5680 to Los Banos, California, a different—I believe it is a different telephone number. The telephone number is 2444, as I recall that is a different telephone number.

Q. Now, can you tell us how many calls were made from the Los Banos number to Adams 5680? Do you have those records with you?

A. I would have no record in Seattle unless charged to this end—charges reversed.

Q. Do you know whether there were any such calls made, any collect calls made to Adams 5680 during that period of time from that Los Banos number?

(Testimony of H. W. McCaffrey)

A. There is no record of such a call, no, during the month of April.

The Court: I think he answered the question.

Mr. Kosher: Did he answer the question?

The Court: He said there was no record. [198]

The Witness: No.

Mr. Kosher: That is all.

### Cross Examination

By Mr. Rousso:

Q. May I clarify — when you said that there were no calls, you mean there was no record of any collect calls?

A. I have no record of any collect calls.

Q. There may have been calls originating that were paid for?

A. I would have no information about calls paid for at the other end.

Mr. Rousso: That is all.

The Court: That is all.

Mr. Volinn: We have no further questions.

The Court: That is all, Mr. McCaffrey.

(Witness excused.) [199]

\* \* \* \* \*

### ROBERT McSHARRY

upon being called as a witness for and on behalf of the plaintiff and upon being first duly sworn, testified as follows:

### Direct Examination

The Court: Will you state your full name and

(Testimony of Robert McSharry.)

spell your last name, please?

The Witness: Robert McSharry, M-c S-h-a-r-r-y (spelling).

By Mr. Guterson:

Q. Will you state your full name, sir?

A. Robert McSharry.

Q. What is your home address?

A. 73 Academy Street, South Braintree, Massachusetts.

Q. What is your present occupation, Mr. McSharry?

A. Civil Service employee, M.S.T.S.

Q. Have you been to sea within the past year?

A. Yes, sir.

Q. Are you presently in M.S.T.S.?

A. Yes, sir.

Q. What ship are you on at the present time?

A. I am not on a ship right now.

Q. When did you last get off a ship?

A. Last Friday. [214]

Q. Where was that? A. New York.

Q. What ship were you on?

A. The John R. Towle; Private John R. Towle.

Q. How do you spell that?

A. T-o-w-l-e (spelling).

Q. Were you ever a seaman aboard the John Polk? A. Yes, sir.

Q. During what period of time was that?

A. I went on the Polk in May.

Q. What year was that?

A. 1954 and I go off the Polk in May of 1955.



(Testimony of Robert McSharry.)

Q. During that period from May, 1954, to May, 1955 did the Polk ever dock in Seattle?

A. Constantly.

Q. Do you know the defendant, Victoria Heller?

A. Yes, sir, I do.

Q. Do you recall when you first made her acquaintance?

A. I think about August, 1954.

Q. Do you remember where that was, sir?

A. Here in Seattle.

Q. Do you know the defendant, Theodore Berg?

A. Yes, sir.

Q. And do you recall where you first met Mr. Berg?

A. On the General John Polk.

Q. Was he on that ship also? A. Yes, sir.

Q. When was it you got to know Mr. Berg?  
Do you remember when that was?

A. I can't say offhand because in a hatch crew I came in contact with everyone, being quartermaster at the gangway I had to give out the liberty cards, and I would say March—January, February, March; along in there.

Q. I see. What was your employment, what was your work aboard the Polk?

A. I was a quartermaster.

Q. How long have you been in M.S.T.S. shipping out?

A. Off and on I have been working Civil Service since 1942.

Q. Have you ever been at the defendant, Vic-

(Testimony of Robert McSharry.)

toria Heller's home on Mercer Island?

A. Yes, sir.

Q. And when you met Mrs. Heller was she residing at the same home where she lives now?

A. No, sir, another home on West Mercer Way, I think it was.

Q. Do you know when it was she moved to her present residence? [216]

A. I think around November.

Q. Of 1954? A. Yes, sir.

Q. Were you in Seattle at all during the month of December, 1954? A. Yes, sir, I was.

Q. Were you in January, 1955?

A. Yes, sir.

Q. That would be when the Polk would be in port, is that right? A. Yes.

Q. During that period of time did you ever see the defendant, Victoria Heller? A. Yes, sir.

Q. And were you ever at her home at Mercer Island, her present home, during those months?

A. Yes, sir.

Q. During that period of time did you ever have any conversations with Mrs. Heller?

Mr. Volinn: Excuse me.

The Court: I beg your pardon?

Mr. Volinn: Well, if the question is preliminary I would like to point out we will object to any conversations made out of the presence of the defendant Berg. [217]

The Court: Well, when that time comes you may make your objection.

(Testimony of Robert McSharry.)

Mr. Guterson: Would you repeat the question, Mr. Reporter?

The Court: Mr. Reporter, read the question.

(Whereupon, preceding question was read by the Reporter.)

Mr. Kosher: If your Honor please, I object to that on the grounds it is vague — conversations about what?

The Court: Well, first I assume if he had no conversations there wouldn't be any further questions; so that I believe it is preliminary. Objection overruled.

By Mr. Guterson:

Q. You may answer, Mr. McSharry.

A. Yes, I have.

Q. All right; can you tell us what the conversations were about?

Mr. Kosher: I object to that if your Honor please, on the ground it is immaterial; also on the ground there is no time, no place, and who was present.

The Court: I think probably you might get a little more specific.

Mr. Guterson: All right.

By Mr. Guterson: [218]

Q. (Continuing): In December, 1954 did you ever have any conversation with Mrs. Heller at her home on Mercer Island?

A. Yes, sir, we had conversations every trip.

Q. Well, how much time did you spend at her home in December, 1954?

(Testimony of Robert McSharry.)

A. I guess I spent most of my time off watch on the ship for the period of time the ship was in.

Q. All right; now, during the month of December, then, in 1954 when you were at the home of Mrs. Heller, do you recall whether or not you had any conversations with her?

Mr. Volinn: I will object again, your Honor. There is no showing as to who was present or whether the defendant Berg was present and any conversation made, so far as the showing made is concerned, is hearsay so far as the defendant Berg goes.

The Court: Your objection is as to Berg. The Court will advise the jury now that any conversations to be related here wherein the defendant Berg was not present would not have any binding effect upon the defendant Berg.

Mr. Guterson: I can ask him that.

By Mr. Guterson:

Q. (Continuing): During December, 1954 when you were at Mrs. Heller's home was Mr. Berg present or not? [219]           A. No, sir.

Q. Now, during that month when you were at Mrs. Heller's home was there anyone present besides yourself and Mrs. Heller?

A. The two children.

Q. I see; were they in the room with you?

A. At times.

Q. All right; now, during that month did you have any conversations with Mrs. Heller?

A. Yes, sir.

(Testimony of Robert McSharry.)

Q. Would you tell us what you said and what she said?

Mr. Kosher: If your Honor please, again I object on the ground it is immaterial. There is no showing that at the time Mrs. Heller knew Mr. Berg. It couldn't be germane to any issue in this case.

Mr. Volinn: I will also object so far as time is concerned. This particular conversation is a little remote. There is no showing at all that the conversations relate to the crime alleged.

The Court: Are you in some way able to identify the nature of the conversation or give the witness the nature of the conversation you are referring to?

Mr. Guterson: I can if that would be proper. I would be glad to do that. [220]

The Court: Well, if counsel are inviting a more specific——

Mr. Kosher (Interposing): That is right.

The Court (Continuing): —— a more specific conversation——

Mr. Guterson (Interposing): All right.

By Mr. Guterson:

Q. (Continuing): During December 1954, when you were at Mrs. Heller's home and Mr. Berg was not there, when she had a conversation, between yourself and Mrs. Heller, did you ever have any conversation with her with regard to prostitution?

A. I think that——

Mr. Volinn (Interposing): I will still object on



(Testimony of Robert McSharry.)

the grounds that any conversation he may have had with Mrs. Heller with respect to prostitution in December 1954, or January, 1955, don't have—it is remote in time and doesn't have any relationship or relevancy to this particular proceeding here.

The Court: The question of remoteness may or may not have a bearing. The mere passage of time and the fact that the conversation may have been in January or December preceding the date here in the indictment, namely April, 1955, the mere lapse of time in and of itself is not sufficient to make it remote. [221]

By Mr. Guterson:

Q. Did you have any conversation with Mrs. Heller concerning prostitution?

A. Yes, sir, we did.

Q. All right. Now will you say what you said and what she said, or the gist of it, as best you can remember, Mr. McSharry.

A. I think it was brought up—we were thinking about getting married, and she was just giving me a background.

Q. What did she say and what did you say?

A. Well, she said she had call girls—one,—was going to open up a house in Everett.

(Whereupon there was a brief pause.)

A. (Continuing): I mean, all conversations seemed to come out about the call girls, referred to——

Mr. Kosher (Interposing): Just a minute. I object to this on the grounds it is not responsive, and



(Testimony of Robert McSharry.)

I move his answer be stricken and the jury be instructed to disregard it.

Mr. Guterson: I think the first part of his answer was responsive, your Honor.

The Court: The last response of the witness, the last words stated, may be stricken, and the jury will disregard them. [222]

By Mr. Guterson:

Q. Did you have any other conversation with Mrs. Heller, or were you present when she conversed with anyone else or spoke to anyone else with regard to prostitution during the month of January, 1955?

Mr. Kosher: I object to that on the grounds it is immaterial and further on the grounds there is no proper foundation laid.

The Court: Objection overruled.

By Mr. Guterson:

Q. (Continuing): Do you understand the question? A. Yes. I can answer?

Q. Yes.

The Court: This is the month of January?

Mr. Guterson: Of 1955.

The Court: In Mrs. Heller's home?

Mr. Guterson: In Mrs. Heller's home.

By Mr. Guterson:

Q. (Continuing): With just the two of you present, and not Mr. Berg.

A. Well, every trip—

Q. (Interposing): Just in January.

A. It is the same as any other trip.

(Testimony of Robert McSharry.)

The Court: The question is, Mr. McSharry,—the question is as to a conversation held in January,—at [223] that time. Now, you have to be responsive to the question.

Now, if you have no recollection of any particular conversation, or any particular meeting, you can't testify.

A. (Continuing): Well, on one occasion there was conversation made where Vicky had told this party on the phone that she had two new girls in town.

Mr. Kosher: Just a minute. I object to this on the ground it is not responsive.

Mr. Guterson: I asked for any—

Mr. Kosher (Interposing): There is no time or place fixed for this conversation.

Mr. Guterson: All right.

The Court: Just a moment. The time has been fixed as in January at Mrs. Heller's home—January, 1955; is that correct?

Mr. Guterson: Yes, sir.

The Witness: Yes, sir.

The Court: You said "on one occasion." Can you fix a time any more definitely than January; the day, or early in January or late in January?

The Witness: Late in January, sir.

The Court: I beg pardon?

The Witness: Late in January.

The Court: Yes.

Mr. Guterson: All right. [224]

(Testimony of Robert McSharry.)

By Mr. Guterson:

Q. Now, was this at Mrs. Heller's home?

A. Yes, sir.

Q. And do you recall what room in the home you were in? A. The bedroom.

Q. And who was present in the bedroom?

A. Myself and Mrs. Heller.

Q. Yourself and Mrs. Heller? A. Yes.

Q. Now, were you talking to Mrs. Heller, or was Mrs. Heller talking on the telephone?

A. Mrs. Heller was talking on the telephone.

Q. All right. Tell me what Mrs. Heller said.

A. That she had two new girls in town, and that this party should try them; that they were very good.

Q. Now, did you see the defendant Victoria Heller when your ship docked in Seattle again on April 15, 1955? A. Yes, sir.

Q. Do you remember where the ship docked?

A. Pier 39.

Q. What day was that?

A. The 15th of April.

Q. And was that in the day time or night, that you came in? [225]

A. In the day time—in the morning.

Q. Did you remain on the ship for a while?

A. Yes, sir; until the ship was cleared.

Q. Now, during the course of that day, Friday, April 15th, did you speak on the telephone with Mrs. Heller? A. Yes, sir.

Q. Did you call her, or did she call you?

(Testimony of Robert McSharry.)

A. I am not sure which.

Q. What was the conversation; what did she and you talk about?

A. Oh, about having a good trip, and explained that I had the four to midnight watch, and I would see her after watch.

Q. That would be midnight of the 15th?

A. That is right.

Q. Now, on the last trip that you took on the boat during March and April, 1955, was Mr. Berg on that trip?

A. No, the last trip he was not.

Q. Now, did you have—did you see Mr. Berg on Friday, April 15, when you arrived in Seattle?

A. Yes.

Q. And where did you see him first?

A. Right by the gangway.

Q. About what time was that, sir?

A. Well, it was in the morning. [226]

Q. The morning of the 15th?

A. Possibly around noon.

Q. Did he come down there to see you, or what?

A. I think he came to see somebody else, and to get his clothes.

Q. Were there other people on the ship that he had known when he had been aboard?

A. Oh, yes, sir.

Q. Now, did you have to stand a watch that day?      A. No; just arrival, is all.

Q. When did your duty end?

A. As soon as the ship was cleared.

(Testimony of Robert McSharry.)

The Court: As soon as the ship was cleared?

The Witness: Yes, sir; Immigration and Customs.

By Mr. Guterson:

Q. Did you stay on the ship that evening and night until midnight?

A. I was off. Mr. Berg was going to give me a ride uptown if I waited until he conducted whatever business he had on the ship, but I think I went off and had a few drinks and came back to stand watch.

Q. That was from four in the afternoon until midnight?

A. From four in the afternoon until midnight.

Q. What did you do at midnight, when you got off watch? [227]

A. Mr. Berg picked me up at the ship—Pier 91—and——

Q. (Interposing): Where did you go?

A. I went to the Sportsman's Bar.

Q. You and Mr. Berg? A. Yes, sir.

Q. Did you meet anyone at the Sportsman's Bar? A. Just the same bartender.

Q. How long did you stay there—do you remember?

A. I think we just had one drink because we had to move on.

Q. Where did you next go?

A. Northern Lights.

Q. This is you and Mr. Berg?

A. No, excuse me—we went to—we had the one drink there, I think; just one drink.



(Testimony of Robert McSharry.)

Q. At the Sportsman?

A. At the Sportsman; and then went to the Northern Lights to meet Vicky.

Q. When you say "Vicky," you mean Victoria Heller, the defendant? A. Yes, sir.

Q. Did you meet her at the Northern Lights?

A. Yes, sir. [228]

Q. Was anyone else from your ship with you at the time? A. No, sir.

Q. Did you meet Mr. Busby that night?

A. Yes, sir.

Q. Where was that?

A. Back at the Sportsman's. We went from the Northern Lights back to the Sportsman.

Q. Is Mr. Busby a shipmate of yours?

A. He was then, yes, sir.

Q. All right. Your party, when you returned to the Sportsman, was Mr. Busby, yourself, Mr. Berg and Mrs. Heller, is that right, sir?

A. Yes, sir.

Q. Where did you go from the Sportsman?

A. We went to the Florence Hotel, where I picked up two bottles of Scotch.

Q. Then where did you go?

A. The Stork Club.

Q. While you were at the Stork Club, how long would you estimate you stayed at the Stork Club?

A. At least one hour.

Q. That is here in Seattle? A. Yes, sir.

Q. While you were there, did you dance with Mrs. Heller? [229] A. Yes, sir.



(Testimony of Robert McSharry.)

Q. And did you have any conversation with Mrs. Heller?      A. Yes, sir.

Q. What did you say to her?

A. I thought that Busby was paying too much attention to her, and asked her if she would get a girl for Busby.

Q. What did she say?

A. She said she would.

Q. Did you have any further conversation with her a few minutes later while still at the Stork Club?

A. Yes, sir. I asked her to get a girl. They were talking about going out to the house to continue the party.

Q. Yes.

A. And so she went to the telephone and evidently called.

Q. Did she talk to you when she came back?

A. Yes.

Q. What did she say?

A. She said there would be a girl for Busby.

Q. Did you have a conversation, any conversation while you were at the Stork Club with Mrs. Heller with regard to Rose West? [230]

A. I think I had asked who was at the house, and she said Ted's wife was at the house.

Q. Vicky said Ted's wife was at the house?

A. Yes, sir.

Q. Where did you and Mr. Busby and Mr. Berg and Mrs. Heller go when you left the Stork Club?

A. Went to Vicky's house on Mercer Island.

(Testimony of Robert McSharry.)

Q. This is the same house you had been at on previous occasions?      A. Yes, sir.

Q. When you arrived at Mrs. Heller's residence, did you meet a girl named Rose West?

A. Yes, sir.

Q. Was she there already?

A. She was there already.

Q. Who else was there when you arrived?

A. Mr. Pearce.

Q. Was he a shipmate of yours also?

A. Yes, sir.

Q. Now, after—what time would you estimate you four people arrived at her home?

A. Well, it must have been around three, I would say.

Q. In the morning?      A. Yes, sir. [231]

Q. What did you do after you got there?

A. Well, everyone was drinking, mixing drinks, and dice games started, and I asked Vicky—I had asked Vicky, still thinking that this girl wasn't going to be at the house like Vicky said. We had been there approximately one-half hour, at least, to one hour; and this girl—I kept asking Vicky where this girl was, and Busby—

Q. (Interposing): What did Vicky say?

A. She said not to worry about it; that the girl was coming.

Q. Did another girl arrive that night?

A. Another girl arrived in a cab.

Q. Do you remember what her name was?

A. Her name was Bonnie.

(Testimony of Robert McSharry.)

Q. Was she introduced to you as such?

A. As Bonnie.

Q. About how long—how late did you stay up?

A. It must have been around five, I guess.

Q. Then what did you do?

A. I went to bed.

Q. In what room, do you remember?

A. In the back bedroom.

Q. After you went in the back bedroom, did you have any further conversation, or did you see Mrs. Heller again?

A. Yes, sir; she came in just before I fell asleep. [232]

Q. Did she say anything to you? A. Yes.

Q. What did she say?

A. She said that I had to pay Bonnie. Bonnie had to be paid \$25.00 if she was going to stay for the night.

Q. What did you respond to that?

A. I got rather mad because we had an understanding that anyone that came with me, that I asked Vicky to get dates for to go out and dine and dance——

Mr. Kosher: Just a minute, if your Honor please. I will object to this as immaterial.

The Court: The last part of the witness's testimony may be stricken.

Mr. Guterson: Yes, your Honor.

The Court: And the jury will disregard it.  
By Mr. Guterson:

Q. Just what you said to Vicky on this occasion.

(Testimony of Robert McSharry.)

What you said to her—the words you used, as best as you can remember, Mr. McSharry.

Mr. Kosher: Furthermore, if your Honor please, it is hard to see the relevancy, if this man wanted a date for one of his buddies, it wouldn't have any relevancy here unless it was a date to commit an act of prostitution, so far as I can see here. The innuendo, I realize, is very bad, but apparently she was just getting a date for one of his buddies. [233]

The Court: Well, the conversation is—the testimony from this witness as I have it here is that when she came in she told him he would have to pay \$25.00 to Bonnie. That was the statement made by the defendant, allegedly by the defendant Heller.

Mr. Guterson: Correct.

The Court: The question now is: What was his response to that?

Mr. Guterson: Yes; exactly.

The Court: I don't know whether it is material or not, but I assume counsel represents it to be such.

Mr. Guterson: Yes, I do, your Honor.

The Court: All right.

By Mr. Guterson:

Q. (Continuing): Do you remember the gist of what you said to Mrs. Heller?                   A. I was mad.

Q. What did you say?

A. Mrs. Heller told me that that was the only way that Bonnie would stay, and I told her that any friend of mine wasn't supposed to ever be charged for being with a girl, that it was just regular parties they would be on.

(Testimony of Robert McSharry.)

The Court: Remember, this is what you said.

Mr. Guterson: Yes, I think that is what he is saying. [234]

By Mr. Guterson:

Q. That is what you said, is it sir?

A. Yes, sir.

Q. Go ahead. Did you say anything more?

A. Yes, sir. I told her to—I didn't want the party to break up, so I told her not to let Busby know, and to go into my pants pocket and get a fifty dollar bill I had there, and give it to Bonnie—give the \$25.00 to Bonnie.

Q. Now, after that, did you go to sleep, Mr. McSharry? A. Yes, sir.

Q. About what time did you awaken?

A. Oh, probably between ten and eleven.

Q. In the morning—Saturday morning?

A. Yes, sir.

Q. All right. Did you get up?

A. Not right away. I heard some yelling going on out in the front room.

Q. Did you get up in a few minutes?

A. In a few minutes I got up.

Q. What room did you walk into?

A. I walked into the kitchen. It is a big room with just a small partition there.

Q. Who was present in the kitchen? [235]

A. Ted Berg; Mrs. Heller was in the kitchen, and Rose was sitting at the dining room table.

Q. Rose West? A. Yes.

Q. Was anybody speaking—was anyone talking?



(Testimony of Robert McSharry.)

A. Mrs. Heller was doing the majority of the talking.

Q. Do you remember the gist of what she said?

A. Well, I tried to find out, but people were pretty mad at that time.

Q. What was Mrs. Heller saying—the gist of it?

A. It was something about \$50.00 being missing, and Rose was being accused of having the \$50.00, and they were trying to get her to give the \$50.00 back.

Q. Where did you say Rose was sitting when you came into the room?

A. At the dining room table.

Q. Was Mr. Berg in the room also?

A. Yes, sir.

Q. While Mrs. Heller was talking to Miss West, did you have any conversation with Mr. Berg?

A. Yes, sir.

Q. What did you say to him?

A. Well, I had remarked to him that I thought it was—how he could stand there let the abusive language that was being used against his wife—

Q. (Interposing): What did Mr. Berg say?

A. Well, she was just a tramp from Frisco.

Q. Following this Saturday, April 15th, did you ever have any further conversations with Mrs. Heller, within the next week thereafter?

A. Yes, sir. I think I had a conversation with Vicky out at Nifty's. I called her on the telephone.

Q. What is Nifty's?

A. That is a little bar over on Harbor Island.



(Testimony of Robert McSharry.)

Q. Is that where your ship was?

A. Yes, at the time.

Q. Did you meet her there?

A. At Nifty's, yes, sir.

Q. All right. What was your conversation; what did you say and what did she say, as best you can remember?

A. Well, a couple of days after this party had happened I was told by Mr. Busby——

Q. (Interposing): No.

The Court: Just a minute.

Mr. Kosher: Object to that on the ground it is hearsay.

The Court: The response to the question is stricken and the jury will disregard it.

Your question is: What was said between you and Mrs. Heller? [237]

By Mr. Guterson:

Q. (Continuing): Just what you and Mrs. Heller said to one another.

A. I told Mrs. Heller that—I asked her what was the idea of Busby's paying \$50.00 to Bonnie, and I was mad about it.

Q. What did she say?

A. She told me just to forget the whole thing—"just forget you ever saw Bonnie."

Q. During May of 1955 did you have any additional conversation with the defendant, Mr. Berg?

A. Yes, sir.

Q. All right. Now, where was it, if you remember?

(Testimony of Robert McSharry.)

A. I don't know whether it was the Firelight Room or Fireside Room at the Moore Hotel.

Q. Was Mrs. Heller present or not?

A. No, sir.

Mr. Kosher: I will object to this conversation so far as Mrs. Heller is concerned.

The Court: Any conversations, the Court will instruct the jury, that are held with one defendant without the other present are to be considered solely with respect to the defendant making the statement and to have no binding effect whatsoever on the guilt or innocence of the defendant not present.

By Mr. Guterson:

Q. What did you and Mr. Berg say to one another; what was your conversation?

A. I asked Berg how he was making out in the case he was involved in.

Q. What did he say?

A. He said it was pending.

Q. Then what did you say?

Mr. Volinn: I will object at this time. I don't see the relevancy yet. I don't see from the way this testimony is going that it is at all relevant, your Honor.

The Court: I ask counsel if it is material and relevant to the issue here involved?

Mr. Guterson: It is, your Honor.

The Court: Objection overruled. You may proceed, Mr. Guterson.

By Mr. Guterson:

Q. (Continuing): Go ahead.

(Testimony of Robert McSharry.)

A. So he said that the case was pending.

Q. Then what did you say?

A. Then I told him to—as he was involved, to save himself; that——

Mr. Volinn (Interposing): I will object and move that the answer be stricken. [239]

The Court: Is this a necessary part of the conversation, Mr. Guterson?

Mr. Guterson: No.

The Court: Well, I suggest that you omit conversation that doesn't relate to the issue here involved.

By Mr. Guterson:

Q. Well, did you say anything else?

A. Yes, sir. I told Berg that Vicky had told me that she was using him, and that was the only reason he was out at the house.

Mr. Volinn: I will move that the answer be stricken. It could mean most anything.

The Court: It doesn't strike me as being relevant, Mr. Guterson.

Mr. Guterson: Excuse me?

The Court: I don't see how this conversation has any bearing on the issues involved.

Mr. Kosher: I think it is prejudicial. I ask the Court to declare a mistrial at this time.

The Court: Motion denied. The Court will strike the last answer of the witness on the stand, and instruct the jury to disregard the questions and answers or any inference that may be drawn therefrom.

(Testimony of Robert McSharry.)

By Mr. Guterson:

Q. Do you recognize Rose West in the court room? [240]      A. Yes, sir.

Q. Was her hair a different color in April when you saw her?

A. I think they call it a platinum blonde.

Mr. Guterson: I have nothing further.

Cross Examination

By Mr. Kosher:

Q. Now, your name is McSharry, is that right?

A. That is right.

Q. And you are a seaman, is that right?

A. That is right.

Q. And you have worked as a seaman for a long time?      A. Yes, sir.

Q. And that is the only occupation you follow, is that right?      A. Yes, sir.

Q. And when did you say you first met Victoria Heller?

A. I think it was about August in 1954.

Q. 1954; could it have been June of 1954?

A. No, I don't think so.

Q. Well, in August, then, of 1954 you say you met her, is that right?

A. July or August. [241]

Q. Did you and she start keeping company at that time?

A. She was in parties with me.

Q. I see. And did you start dating her?

A. A couple of trips later.

(Testimony of Robert McSharry.)

Q. And did you go with her pretty steadily from that time up until the time this trouble started?

A. Yes, sir.

Q. And you and she planned on getting married—isn't that right?      A. Yes, sir.

Q. In fact, this house out at Mercer Island you helped her buy, isn't that right?

A. No, sir. The house was in my name, but none of my money was involved in it.

Q. But it was put in your name, is that right?

A. Yes, sir.

Q. You didn't know her to be a prostitute, did you? You didn't know Mrs. Heller was a prostitute?

A. She told me herself—not that she was a prostitute.

Q. That is what I mean. And while you were out at her house you didn't see any prostitution carried on, did you, at any time?

A. No, sir. [242]

Q. And you knew that her two little boys lived out there with her, isn't that right?

A. That is right.

Q. And isn't it a fact that out at that house she was very, very careful how she conducted herself, because she had the two little boys there?

A. Yes, sir.

Q. And, in fact, when you visited her wasn't it understood that she wouldn't let many people come out to the house because she didn't want to involve her two babies, or two little boys?

A. That is right.



(Testimony of Robert McSharry.)

Q. And she did, you say she did tell you from time to time she did take calls over the telephone, and deliver girls out on calls; is that right?

A. Right.

Q. Now, you did go to her house some time on the—was it the 13th or 14th of April? What day was it counsel asked you about?

A. 15th of April. We docked the night of the 15th of April. The 16th would be Saturday morning we went to the house.

Q. And did Mrs. Heller come down to the boat and pick you up?

A. No. Ted Berg picked me up at the ship. [243]

Q. Ted Berg picked you up at the ship, and you went out to Mrs. Heller's house; is that right?

A. No, we went to the Sportsman.

Q. I mean, you partied around downtown, and then you went to the house, is that right?

A. That is right.

Q. Wasn't it understood when you met her that they were going to have a little party for Mr. Berg's wife to be; isn't that what you understood?

A. No, sir.

Q. You thought that Rose West was Mr. Berg's wife?

A. That is the way I was told.

Q. Did they introduce her to you under the name of Rose West or Rose Berg?

A. The way I was introduced was, "This is Rose, Ted's wife."



(Testimony of Robert McSharry.)

Q. And I gather you took it she was Mr. Berg's wife, is that right?

A. Yes, sir; that is the way it was understood.

Q. Now, did you understand that they were going to have a little party for her out at Mrs. Heller's house?      A. No.

Q. You didn't understand that?      A. No.

Q. But there were some boys off the ship out at the [244] house, and drinking was going on?

A. That is right.

Q. When you saw Rose, what was her condition so far as sobriety?

A. I would say everyone was drinking. I wouldn't say everyone was drunk, or anyone was drunk.

Q. What about Rose—was she sober?

A. She seemed to be.

Q. Had she been drinking?      A. Yes, sir.

Q. And how much did you see her drink that night?      A. Oh, two, maybe three.

Q. Then you went to bed, is that right?

A. That is right.

Q. You went in and lay down on the bed there, and you didn't see whether she drank any more or not that night, did you?      A. That is right.

Q. You woke up about ten o'clock in the morning and you heard a commotion going on, is that right?      A. That is right.

Q. And you heard these people accuse Rose of having stolen money from someone; is that right?

A. That is right.

(Testimony of Robert McSharry.)

Q. Did you ever hear Rose say she didn't steal it? [245]

A. All I heard Rose say was she didn't have it. She said she didn't.

Q. Did she say she had given back some of the money? A. No, sir.

Q. She didn't say that. Now, you say that a girl by the name of Bonnie came out?

A. That is right.

Q. Now, you asked Mrs. Heller to get a date for your buddy, isn't that right?

A. That is right.

Q. You didn't expect her to get a prostitute for your buddy, did you?

A. I expected a good-time girl that wanted a party.

Q. You expected a girl that wanted to have some fun, is that right?

A. I figured she was getting one of the girls that we all knew.

Q. I see; you didn't expect her to pay the girl, though, did you? A. No, sir.

Q. In other words, you expected some girl would come out and entertain your buddy for free, is that right? A. That is right.

Q. And presently a girl by the name of Bonnie came out, is that right? [246]

A. That is right.

Q. Didn't Mrs. Heller tell you that Bonnie had to get a baby sitter to take care of her child?

A. I don't recall that.

(Testimony of Robert McSharry.)

Q. And that was the reason she was late?

A. I don't recall that.

Q. And didn't she tell you Bonnie was a book-keeper downtown? A. No, sir.

Q. She didn't tell you that? A. No, sir.

Q. As a matter of fact, you knew that Bonnie was not a common prostitute, didn't you?

A. I didn't know Bonnie—period.

Q. You don't know whether she was a prostitute or not? A. No, I don't.

Q. So far as you know, she could have been a real nice girl? A. Yes, sir.

Q. Didn't Mrs. Heller tell you she was going to get Bonnie to come out on this blind date and they would have to pay the baby sitter and her taxi fare?

A. No, sir.

Q. Now, you didn't give Mrs. Heller any money to give [247] to any girl for the purpose of performing any kind of an act of prostitution, did you?

A. I gave Mrs. Heller the money to pay Bonnie for staying with Busby, instead of going back to town.

Q. Now, when you say "staying with him," you mean to entertain him out there?

A. Entertain him.

Q. You didn't see anybody go to bed out there, did you? A. No, sir.

Q. And there were no promiscuous acts of intercourse going on in that house, is that so?

A. Not to my knowledge.

(Testimony of Robert McSharry.)

Q. Now, as a matter of fact, this little party you had out there was just a dice and drinking party—is that right?

A. That is what it was, and I went to bed.

Mr. Kosher: I think that is all.

Cross Examination

By Mr. Volinn:

Q. The conversations you had with Mrs. Heller in December and January relating to call girls and prostitutes,—Mr. Berg was never present at any of those conversations? A. No, sir. [248]

Q. And you never told him about those conversations, did you? A. Not to my knowledge.

Q. Now, actually, the first time you and Berg went out——

A. (Interposing): I rightfully couldn't say.

Q. (Continuing): ——was some time in March or in April?

A. I would say March, probably.

Q. You introduced Berg to Mrs. Heller, did you not? A. No, I didn't.

The Court: Introduced who?

Mr. Volinn: Mr. Berg to Mrs. Heller.

By Mr. Volinn:

Q. Somebody else did?

A. I think he introduced himself. I wasn't there, but——

Q. (Interposing): You don't know?

A. I know the time he met Vicky, but I was in

(Testimony of Robert McSharry.)

another place, and I didn't know that Mrs. Heller was going to be where Berg went.

Mr. Kosher: Could I ask him one more question?

The Court: Are you through?

Mr. Volinn: I am finished.

The Court: Very well. [249]

### Cross Examination

By Mr. Kosher:

Q. Isn't it a fact there were some hard feelings between you and Mrs. Heller some time in April of this year, just about the time this trouble started?

A. We had had spats off and on ever since I had known her.

Q. These spats of recent date were over Mr. Berg, wasn't that right? Didn't you think she was paying too much attention to him?

A. Yes.

Mr. Kosher: I think that is all.

Mr. Guterson: I have nothing further.

The Court: That is all.

(Witness excused.)

Mr. Guterson: Mr. Busby. [250]

### JOHN R. BUSBY

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

### Direct Examination

The Clerk: Will you state your full name and spell your last name, please?

(Testimony of John R. Busby.)

The Witness: John R. Busby, B-u-s-b-y. (Spelling.)

By Mr. Guterson:

Q. Will you state your full name, sir?

A. John R. Busby.

Q. What is your home address?

A. 729 Jones Street, San Francisco.

Q. What is your present occupation?

A. I am unemployed at the present time.

Q. What kind of work have you been doing during the past year?      A. Seaman.

Q. What ship were you aboard?

A. The last one I was aboard was the Motor Ship North Star.

Q. What ship were you on before that?

A. The John Polk.

Q. Do you recall what period you sailed on the John Polk? [251]

A. From August, 1954, to June, 1955.

Q. As a member of the crew of the John Polk did you ever know—did you know the defendant, Theodore Berg?      A. Yes.

Q. Is that where you met him—on the Polk?

A. Yes. He was in my boat crew.

Q. Did you know the man who preceded you to the witness stand, Robert McSharry?

A. Yes, sir.

Q. Where did you meet him?

A. Aboard ship.

Q. Now, during the month of April of this year, 1955, did the Polk dock at Seattle?



(Testimony of John R. Busby.)

A. Yes, it did.

Q. Do you remember what day it was?

A. It was April 15th.

Q. That was a Friday, sir? A. Yes, sir.

Q. Do you remember what you did that evening and night?

A. Well, that evening I just ran around town saying hello to friends.

Q. Did you ever meet Mr. McSharry that night?

A. Yes, about twelve or twelve-thirty at the Sportsman. [252]

Q. Do you recall who else was in the party?

A. Yes. There was Vicky Heller and Ted Berg.

Q. Had you ever met Mrs. Heller before that night? A. Yes, I had.

Q. Do you remember where Mr. McSharry, Mr. Berg, Mrs. Heller and yourself went from the Sportsman?

A. From the Sportsman up to the Stork Club.

Q. Here in Seattle, a night spot?

A. Yes, sir.

Q. What did you do there?

A. Drank and danced.

Q. Did you dance with Mrs. Heller?

A. Yes.

Q. Do you remember where you went after you went—after you left the Stork Club?

A. From the Stork Club we went out to Vicky's house.

Q. The house on Mercer Island?

A. Yes; the house on Mercer Island.

(Testimony of John R. Busby.)

Q. Now, do you see Rose West in the court room?      A. Yes.

Q. Now, did you meet Rose West that night?

A. Yes.

Q. Where was it?

A. That was out at Vicky's house. [253]

Q. Had you ever seen her before?

A. No, I never had.

Q. Do you remember whether any other people were there when you arrived, besides Rose?

A. There was George Pearce.

Q. Was he also a shipmate of yours?

A. Yes.

Q. What did you do at Mrs. Heller's house after you arrived?

A. Sat around and drank for a while, and then a crap game started.

Q. Besides Mrs. Heller and Miss West, were there any other women there when you arrived?

A. Not that I can recall.

Q. Do you recall whether or not any other woman came after you arrived?      A. Yes.

Q. And about how long were you there, would you say, before any other woman arrived?

A. It must have been about one hour.

Q. Do you recall who it was that arrived?

A. A girl named Bonnie.

Q. About what time did you go to sleep, if you remember?

A. Oh, it must have been four or five o'clock in the morning. [254]

(Testimony of John R. Busby.)

Q. Did you sleep there that night? A. Yes.

Q. Do you remember what room it was?

A. The bedroom.

Q. About what time did you wake up?

A. Well, it must have been about ten-thirty or eleven o'clock.

Q. Saturday morning?

A. Saturday morning, yes.

Q. Did you get up? A. Yes.

Q. Do you remember where you went? Did you stay in the house, or go in some other room?

A. I got up and went into the bathroom to wash my face.

Q. Who was present in the house, do you remember, after you got up?

A. Well, there was Ted Berg, Vicky Heller, Rose West, Bob McSharry was there, and I believe Bonnie was there.

Q. What did you do after you washed up?

A. Well, when I was in the bathroom Ted came into the bathroom with my wallet and some money in his hand.

Q. Did Mr. Berg say anything to you? [255]

A. He asked me if that was my wallet, and I said yes, and he asked me to count the money, and I did, and he asked if it was all there, and I didn't know how much I had spent the previous evening.

Q. Had you been drinking pretty heavily?

A. Yes, I had.

Q. After you went out of the bathroom, where did you go?

(Testimony of John R. Busby.)

A. I went into the dining room.

Q. Do you remember who was there?

A. Rose West was there.

Q. Anybody else?

A. Well, Rose West and Berg, and I believe McSharry was there.

Q. Was Mrs. Heller there?           A. Yes.

Q. What happened there?

A. Well, Rose was sitting at the dining room table, and they were accusing her of having taken my money. I can't remember her saying anything to it, whether she—she neither admitted it nor denied it.

Q. Now, was this girl who had arrived during the night before, Bonnie, was she still there at the house?           A. Yes.

Q. Had you recovered your money by this time?

A. Yes.

Q. You had all your money——

A. (Interposing): Yes.

Q. (Continuing): ——what Mr. Berg had given back to you, is that true?           A. Yes.

Q. You were not sure it was correct, but whatever it was?           A. Whatever it was.

Q. Did you pay out or use any of your money from then on?

A. Bonnie had told me she was broke, so I gave her \$50.00.

Q. Did you have any other relationships with Bonnie?

(Testimony of John R. Busby.)

A. It was about, I guess, ten or fifteen minutes later I propositioned her.

Q. Did you have intercourse with her?

A. Yes.

Q. Was that while Mr. Berg and Mrs. Heller were in the house?                    A. I believe so, yes.

Q. Now, about what time did you leave the home?

A. It must have been about one-thirty or two o'clock.

Q. Where did you go?

A. They drove me downtown. [257]

Q. Who drove you?                    A. Ted Berg.

Mr. Guterson: I have nothing further.

### Cross Examination

By Mr. Kosher:

Q. Now, you had been drinking, isn't that right?

A. Yes.

Q. Isn't it a fact that you and Bonnie went downtown?                    A. Yes.

Q. And——

A. (Interposing): The next day.

Q. And isn't that where you had this act of intercourse with her?

A. No, it was out at the house.

Q. Do you remember where you had it?

A. It was out at Vicky's house.

Q. Did you ever tell anybody you had propositioned Bonnie on the way home?                    A. No.

Q. You don't remember that?                    A. No.

(Testimony of John R. Busby.)

Q. Now, did you give her this money for the purpose of committing an act of prostitution?

A. No, I didn't.

Q. Why did you give her this \$50.00?

A. She said she was broke, and I was very grateful for having my money back and returned to me, so I felt like doing something for somebody.

Q. Now, did you hear Rose West say she had not stolen the money?

A. I didn't hear her say anything.

Q. You didn't hear her say anything?

A. Not in my presence.

Q. Did you hear her accused?

A. I heard her accused.

Q. Did Mrs. Heller apologize to you for the fact somebody had tried to steal some money at her house?

A. Yes, she did.

Q. And did she remonstrate with this girl about it?

A. Yes, she did.

Q. Did you hear her tell the girl she would have to leave?

A. I believe she said something like that.

Q. Did you hear her say she didn't want any thief in her house?

A. Yes.

Q. Now, what was Rose West's condition, insofar as sobriety was concerned, each time you saw her? [259]

A. She appeared to have been drinking very heavily.

Q. Would you say she was intoxicated?

A. Yes, I would.



(Testimony of John R. Busby.)

Q. And did she give signs of being intoxicated?

A. Yes.

Q. Now, when you first met Mrs. Heller, did you know her to be a prostitute?

A. No, I didn't.

Q. Did you ever know her to be a prostitute?

A. No.

Q. Even as you sit in this court room, do you know of your own knowledge that this woman has ever been a prostitute? A. No.

Q. Have you ever known her to solicit girls for the purpose of prostitution?

A. Not to my knowledge.

Q. Had you been out to her house on a number of occasions with Bob McSharry?

A. I had been out there once before in the afternoon.

Q. What kind of a place was it you went to?

A. It was a private home.

Q. How did Mrs. Heller conduct herself at that house?

A. As anyone would at their home.

Q. Did you see her little boys out there? [260]

A. Yes.

Q. Did you see any young girls going in and out of bedrooms while you were there?

A. No.

Q. Did you see any men coming and going?

A. No.

Q. Did you see anything in that house that would indicate to you that it was being conducted

(Testimony of John R. Busby.)

as a house of prostitution?           A. No, I didn't.

Mr. Kosher: You may inquire.

Cross Examination

By Mr. Volinn:

Q. The fifty dollar bills returned to you—you were returned a fifty dollar bill?           A. Yes.

Q. Who handed them to you?

A. Ted Berg.

Q. They were wet, weren't they?

A. Yes, they were.

Mr. Volinn: That is all.

Mr. Guterson: I have nothing further.

The Court: That is all.

(Witness excused.)

Mr. Guterson: Mrs. Keating. [261]

MARGARET KEATING

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, and spell your last name, please?

The Witness: Margaret Keating. K-e-a-t-i-n-g. (Spelling.)

By Mr. Guterson:

Q. Will you state your full name, please?

A. My name is Mrs. Margaret Keating.

(Testimony of Margaret Keating.)

Q. Will you speak up, so that everyone can hear you?

A. I am Mrs. Margaret Keating.

Q. What is your home address?

A. 4134 84th Southeast, Mercer Island.

Q. Have you ever seen the defendant, Victoria Heller, before today?      A. Yes, I have.

Q. And where does she live in relation to where you live?      A. She lives on the left of us.

Q. Right next door?

A. Right next door. [262]

Q. How long have you lived at your present address?

A. We have been there three and one-half years.

Q. Are you married?      A. Yes.

Q. What does your husband do?

A. My husband is an airline pilot.

Q. For whom?

A. For Pacific Northern Airlines.

Q. Do you have any children?

A. I have four children.

Q. How old are they?

A. The oldest is twelve. There is an eleven-year-old, a seven-year-old, and a five-year-old.

Q. And are they boys or girls?

A. The older ones are boys and the younger ones are girls.

Q. Do they attend school here?      A. Yes.

Q. Where is that?

A. Mercer Crest School.

(Testimony of Margaret Keating.)

Q. How long have you lived at your present address?      A. Three and one-half years.

Q. Do you remember approximately when it was Mrs. Heller moved in next door to you?

A. It was some time in November. [263]

Q. What year?      A. Last year.

Q. 1954?      A. Yes.

Q. Does Mrs. Heller have two boys?

A. Yes, she does.

Q. How old are they?

A. There is a thirteen-year-old, and an eight-year-old.

Q. Have you seen them on many occasions?

A. Oh, yes.

Q. Now, during the period between November 1954 and mid-April, 1955, would you generally be home in the evenings and at night time with your family?      A. Yes.

Q. Now, as such, did you have occasion to observe people coming or going to Mrs. Heller's home?

A. Yes, I did.

Q. How would you, in your own words, describe the traffic there?

Mr. Kosher: Just a minute. I object on the ground it is incompetent, irrelevant, and immaterial.

Mr. Guterson: Your Honor, on the cross examination of the last witness Mr. Kosher opened this very subject, [264] and I think we have a right to go into it with this witness. She is a next-door neighbor.

(Testimony of Margaret Keating.)

He asked the other witness whether he saw girls running in and out.

The Court: Objection overruled.

By Mr. Guterson (Continuing):

Q. You may answer, Mrs. Keating.

A. Well, the traffic during the day—we didn't notice much traffic during the day, but at night there was quite a bit of traffic coming and going in that house.

Q. By cars, would it be?

A. Car and cab.

Q. And how late at night would this be?

A. Well, all night; all night.

Q. How often—how many times a week, as best you can approximate?

A. Well, I was conscious of it almost every night.

Q. I see. Now, you were still living at the same place next to Mrs. Heller on Saturday, April 16th, 1955, is that not right? A. Yes.

Q. Now, before—prior to that date, April 16th, have you ever seen Rose West? A. No.

Q. Prior to that date, April 16th, had you ever seen Theodore Berg? [265] A. No.

Q. On April 16 did you see Rose West?

A. Yes.

Q. What were the circumstances of your meeting her? A. She came to my door.

Q. Do you recall what time this was?

A. Some time between eleven and eleven-thirty.

Q. In the morning? A. In the morning.

(Testimony of Margaret Keating.)

Q. She came to your door?

A. She came to my door and she was in a——

Q. (Interposing): How was she dressed?

A. She had a white sweater and a gray skirt and no stockings, and some high-heeled pumps.

Q. Did you let her in your home?

A. She asked me to.

Q. Did you let her in?           A. I let her in.

Q. Do you know where she first went in your house?

A. She stood there talking to me for a moment, and then she heard someone at the door and she was frightened and ran in my bathroom.

Q. Did you answer your door again?

A. Yes. [266]

Q. Who was it that was there?

A. It was the man in the tan shirt.

Q. Mr. Berg?           A. Mr. Berg.

Q. You didn't know his name?

A. I didn't know who he was.

Q. What did the man in the tan shirt that you now recognize in the court room say to you?

Mr. Kosher: I object to that on the grounds it is hearsay as to the defendant Heller.

The Court: Again the Court will advise the jury, as I have on a number of occasions before, conversations with respect to one defendant when the other one was not present is not binding on the defendant not there. You may proceed.

By Mr. Guterson:

Q. (Continuing): You may answer.



(Testimony of Margaret Keating.)

A. He said, "Did my wife come here, — a little blonde girl?"

Q. What did you say? A. I said, "No."

Q. And what did he do?

A. He went off looking for her.

Q. Was Miss West in your house all this time?

A. Yes. [267]

Q. All right. How long did she stay there?

A. She was there until about twelve-thirty.

Q. And where did she go, or where did you go?

A. I took her down town to a hotel.

Q. Do you remember whether or not you gave her any money? A. Yes, I did.

Mr. Kosher: I will object to this on the grounds it is not material.

The Court: It seems not to be material. Well, I don't know, under the circumstances. I will withdraw the Court's ruling and the question may stand. By Mr. Guterson:

Q. Do you recall whether or not you gave her any money? A. Yes.

Q. Do you recall how much money you gave her?

A. I gave her a twenty dollar bill.

Q. Do you recall where you took her?

A. I took her down by the Stewart Hotel.

Q. Now, did you speak at all to Miss West again that day over the phone? A. Yes.

Q. Did you call her, or did she call you?

A. I asked her to call me when she found out how she [268] could get home and get the money and to let me know.

(Testimony of Margaret Keating.)

Q. Did she call? A. She did call me.

Q. That day? A. Yes.

Q. Now, as of this date, Saturday, April 16, 1955, had Mrs. Heller ever visited you at your home? A. No.

Q. Following that date did Mrs. Heller ever visit you at your home? A. Yes.

Q. About how long after April 16th would you estimate that to be?

A. Well, it was just two days before the other hearing.

Q. A couple of weeks into May?

A. It was in May, or June.

Q. Was Mr. Berg present? A. No.

Q. All right. Did Mrs. Heller come into your home? A. Yes.

Q. Do you remember whether that was in the day time or evening? A. It was at night.

Q. Who was present? [269]

A. My children were all asleep.

Q. Then who was present?

A. Just Mrs. Heller and I.

Q. Your husband was away?

A. My husband was expected home about ten o'clock.

Q. About what time did Mrs. Heller come to your home? A. She came about nine o'clock.

Q. What did Mrs. Heller say to you?

A. Well, she asked me first if Rose West had come to my house, and I told her yes, she had.

(Testimony of Margaret Keating.)

Q. Was this in reference to Saturday, April 16th? A. Yes.

Q. What did you tell her?

A. I told her yes, she had.

Q. What did Mrs. Heller say?

A. She asked me in what condition I had found Miss West.

Q. And your response was what?

A. I told her she was very hysterical and disheveled, and that she told me what they had done to her over there, and she was frightened, and wanted my protection, and I told her what I had done with her, and had given——

Q. (Interposing): What did you tell her?

A. May I tell?

Q. Yes. [270]

A. I told her that she told me everything that had been done to her, and that she had—they had been——

Mr. Kosher (Interposing): I object to this on the ground it is immaterial. Conversation of this nature doesn't have any bearing on the issues in this case.

The Court: It would seem to be immaterial, this part of it, the details of it.

Mr. Guterson: All right.

By Mr. Guterson:

Q. After you told Mrs. Heller that Miss West had come to your home, what other conversation did you have with Mrs. Heller?

A. I told her I was surprised she would have

(Testimony of Margaret Keating.)

Miss West there with her small children, and I had gotten quite an impression of what had been going on in that house.

Q. What did Mrs. Heller say?

A. She explained that Miss West had come up here to marry a friend of hers, and she had just kept her there as a favor to this friend, to whom she was to be married.

Q. I see. Did Mrs. Heller or yourself say anything more with regard to Miss West?

A. Oh, yes; she said she was an alcoholic, and had exposed herself to the landscape gardener, and she told me she had, on the way down with the United Air Lines, that she had had intercourse with the pilot, and things of that [271] sort.

Q. This is Mrs. Heller talking to you about Miss West?

A. Yes.

Q. Did she explain to you in any way the reason why she had her at her home?

A. Just as a convenience to Mr. Berg.

Q. Did you inquire, or did you have any conversation with Mrs. Heller with regard to the party that had been there that night and other nights?

A. Yes, she sort of explained that to me, because I asked what had been going on, and she said that Rose had stolen some money, and that these people that were there were friends of hers from a ship, and that they often came there to parties, and that the men trusted her implicitly with their money, and it was as safe with her as if in a bank, and that

(Testimony of Margaret Keating.)

they just had a good time, and it was just drinking, and that sort of thing; and——

(Whereupon there was a brief pause.)

Q. Did Mrs. Heller tell you whether or not she knew as to whether Miss Rose West had ever been a prostitute?

A. She told me she knew she had a record for that in California.

Mr. Guterson: I have nothing further. [272]

### Cross Examination

By Mr. Kosher:

Q. You live right next door to Mrs. Heller, do you? A. Yes.

Q. You are how far away?

A. Just an ordinary one hundred foot lot, and she is my next-door neighbor.

Q. And you say you know her two little boys?

A. Yes, I do.

Q. They come over to your house?

A. They do.

Q. As a matter of fact, she sends them to Sunday School with your children?

A. We invited them to Sunday School.

Q. And the kids all went to Sunday School together, is that right? A. Yes.

Q. And you say there were cars coming and going all night long every night?

A. When I would be conscious of it. My husband is an airline pilot and he gets in at all hours, and I



(Testimony of Margaret Keating.)

would be conscious of the traffic, because I would be waiting for his car to drive in.

Q. And how many cars would you see there at one time? [273]

A. Oh, sometimes three cars at a time.

Q. But she did tell you they had a lot of parties?

A. She told me they had a lot of parties.

Q. Did she tell you she was going with a young man who was on a ship?

A. That she had been going with him.

Q. Yes. And didn't she tell you there were a lot of parties when she was going with him?

A. Yes.

Q. And she also told you, did she not, that that house was not used as a house of prostitution?

A. She didn't tell me anything about that.

Q. Didn't you ask her? A. No.

Q. As a matter of fact, it never dawned on you that your next door neighbor might have been operating a house of prostitution, did it?

A. We didn't know what she was doing there.

Q. And when you asked her about Rose West, she said Rose West had come up from California to marry a friend of hers—isn't that right?

A. Yes.

Q. And didn't she tell you she permitted her to stay at her house as a convenience to this friend of hers? A. Yes. [274]

Q. And it was Mrs. West, isn't that right?

A. Yes.



(Testimony of Margaret Keating.)

Q. Now, when Rose West came to your house, could you tell whether or not she had been drinking?

A. She was sober, but I could tell she had been drinking.

Q. Could you tell whether or not she had been affected by the drinks she had?

A. I didn't feel she was intoxicated at the time.

Q. Did you supply her with any liquor while she was in your house?      A. No.

Q. Did she have any beer to drink there?

A. No.

Q. Did she ask you for anything to drink?

A. No. I gave her aspirin tablets.

Q. Did she ask for an aspirin tablet?

A. I gave it to her because she had a headache.

Mr. Kosher: I think that is all.

Mr. Volinn: I have no questions.

Mr. Guterson: Thank you, Mrs. Keating.

The Court: That is all, Mrs. Keating.

(Witness excused.) [275]

\* \* \* \* \*

### ALFRED G. GUNN

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

#### Direct Examination

The Clerk: Will you state your full name and spell your last name, please?

(Testimony of Alfred G. Gunn.)

The Witness: Alfred G. Gunn, G-u-n-n. (Spelling.)

By Mr. Guterson:

Q. Will you state your full name, sir?

A. Alfred G. Gunn.

Q. What is your home address?

A. 3220 109th Southeast, Bellevue, Washington.

Q. What is your occupation?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been a member of the F.B.I.?      A. Going on 16 years.

Q. Are you assigned to the Seattle office?

A. Yes, I am.

Q. How long have you been here in Seattle?

A. A little over three and one-half years.

Q. In the course of your duties as an agent with the Federal Bureau of Investigation, did you have occasion [278] to interview and speak with the defendant, Victoria Heller?      A. Yes, I have.

Q. Can you tell us when that conversation came about?

A. Well, Mrs. Heller telephoned and requested to talk to me at my office, and I asked her to come down.

Q. Do you recall what date this was?

A. I talked to her on the morning of April 28, 1955.

Q. Where was this conversation at?

A. At the Seattle office of the Federal Bureau of Investigation.

(Testimony of Alfred G. Gunn.)

Q. Was anyone present besides yourself and Mrs. Heller?

A. Just the two of us during most of the interview. Another Special Agent came in and out a time or two—my partner.

Q. What was the opening conversation: what did you say to her?

Mr. Volinn: Excuse me. If I may, I will object to any binding effect—

The Court (Interposing): Are you objecting to the testimony, or do you want an instruction regarding the effect of it?

Mr. Volinn: I would like the Court to instruct the jury.

The Court: Mr. Berg wasn't present during this [279] conversation, I take it?

Mr. Guterson: No.

The Witness: No, he was not.

The Court: Again, the Court will advise the jury that the conversation—any conversation that may be testified to between this witness and the defendant Heller would have no binding effect and would not be considered with respect to the guilt or innocence to the defendant Berg if he was not present.

By Mr. Guterson:

Q. (Continuing): What did you say to Mrs. Heller, Mr. Gunn?

A. I had previously known Mrs. Heller, and I advised her that anything that she told me at this time would possibly be used against her in court at

(Testimony of Alfred G. Gunn.)

a future time, and that her coming in to see me was voluntary on her part, and that she had a right to have an attorney present, if she so desired.

Q. Do you know whether or not this case was then pending?

A. She told me that she had been arrested a week or so previously by the local sheriff's department, and that she understood that the F.B.I. was going to investigate her on the same incident that caused her arrest by the sheriff's office, and that was the reason she wanted to come [280] in and talk to the F.B.I. and tell them her side of the picture before the investigation started.

Q. Did you have any conversation with regard to her meeting and association with Mr. Berg?

A. Yes, I did.

Q. What did she say?

A. She said she had first met Mr. Berg—she called him Cedric Ted Berg—and she met him in January, 1955, on a blind date.

Q. What was his occupation at that time, did she say?

A. She said he was a seaman assigned to the General Polk, and that she had been previously acquainted and going with another seaman by the name of Bob McSharry on that ship, but she and Bob had split up two or three months prior to the interview with me, and that she had met Berg about January of 1955.

Q. Did you and she have any conversation with

(Testimony of Alfred G. Gunn.)

regard to her associations with Berg during the month of March, 1955?           A. Yes, we did.

Q. What was it that she said?

A. Well, she told me that she had seen Berg in clubs when the ship was in—when the Polk was in, between January, and in March; and in March when the ship left [281] Seattle, Berg didn't ship out on it, but he stayed around, and they partied in Clubs for about a week; and then he took a trip to his home at Los Banos, California, and she told me he was expected to be gone a week or ten days or two weeks, and was to call her on his return from California. She expected him back, but he didn't call, and one evening she went down to the Sportsman's Bar to inquire from the bartender as to whether he had heard from Berg, that the bartender was a friend of Berg's, and said she learned there berg had just arrived in town from Los Banos that day. She placed that date as March 28, 1955.

She told me she had conversations with Berg at that time, and that he was waiting for the ship to return, the General Polk, which was out at sea, and she made her home available, and told him he was welcome to stay at her home while waiting for the ship to come back into port.

Q. At that time was there any conversation between Mrs. Heller and Mr. Berg concerning the trip to Los Banos?

A. Only that he had been down there. She didn't tell me anything further about the trip.



(Testimony of Alfred G. Gunn.)

Q. Did she say whether or not Mr. Berg accepted her offer and came to her home?

A. Yes, she said he moved out and stayed in one of the spare bedrooms at her home.

Q. How long did he stay there, did she say?

A. She said he was still there on April 13th through 16 when other events transpired that she related to me.

Q. Did you and Mrs. Heller have any conversation on this occasion with regard to Rose West?

A. Yes, we did.

Q. What did she say?

A. She told me that Berg had told her about Rose, that Berg told her he had known Rose for about seven years, and that Rose had been a prostitute prior to the time when she had a child, about five years ago, but had not prostituted since that time.

She told me that Berg had told her that he wanted to marry her, and was thinking about buying a home in Seattle, and wanted to bring her up to Seattle and marry her. She told me that Berg telephoned Rose West.

Q. From her home?

A. From her home; and she told me that she talked to Rose during one of the telephone conversations from her home, and I think later she told me she talked two or three times during conversations Berg had with Rose West on the phone.

Q. Did she tell you what she said to Rose West during the conversations?



(Testimony of Alfred G. Gunn.)

A. She just told me she told Rose she thought she [283] would like it in Seattle, and encouraged her to come up here and that their purpose was to come up and get married to Ted.

Q. Did she indicate whether or not some of these calls were made from her phone at her home?

A. Yes, she did. She said there were two or three calls made from her home by Ted, and that she talked on some of the calls.

Q. Did she tell you whether or not Miss West did in fact come to Seattle?

A. Yes, she did. She told me during one of the calls—I think it was the first call—that while the conversation was taking place between Ted and Rose that Ted told Rose he would send her \$60.00 by Western Union. She said that after about ten days Rose West didn't arrive in Seattle, so Ted called again to inquire as to whether she got the money and whether she had spent it.

It was shortly after the second or third call that she next heard from Rose by telephone, when Rose called at Vicky's home and told Mrs. Heller that she was at the airport in Seattle.

Q. Did she come out to the home?

A. Mrs. Heller said she told Rose she didn't have a car to pick her up, and told her to take a taxicab to the home at Mercer Island, and I don't recall whether Mrs. [284] Heller told me that Rose already had the address, or whether she gave it to her on the phone at that time.

Q. Did Mrs. Heller tell you whether or not there

(Testimony of Alfred G. Gunn.)

was any conversation between herself and Miss West at the time Miss West arrived at the home?

A. Yes, she did.

Q. What was the conversation as she related it to you?

A. She told me Miss West arrived, and had been drinking heavily, and that Miss West told her that she had done a trick with the pilot of the airline coming up for \$15.00.

Mrs. Heller told me that she told Rose at the time that she shouldn't have done it, and also that \$15.00 was too cheap. She told me that at that time that she told Rose to come in and make herself at home, that she was welcome to stay there until she decided whether she was going to like it in Seattle and wanted to stay here.

Q. Did she indicate whether or not Miss West did, in fact, stay there?

A. Yes, she did say she brought her things in and stayed there.

Q. What was her narrative with regard to that day, Wednesday, April 13, 1955?

A. She told me that Mrs. or Miss West, or Rose West, [285] had arrived in the morning some time after seven or so, and that Mrs. Heller herself went back to bed until about one-thirty in the afternoon.

About one-thirty Mrs. Heller and Ted Berg left to go down town. She told me that Rose did not want to go with them. They were going down to look for a car—for a Dodge. They were trying to buy a car, and they went down to look at the

(Testimony of Alfred G. Gunn.)

Dodges; and she told me, she, herself, and Ted Berg went down town, and Rose West stayed at her home.

Q. Did she indicate what time they returned to the home?

A. She told me they returned in the evening, and she told me Rose West had killed a fifth of liquor.

Q. During that day did she tell you anything further with regard to the events of that day?

A. She told me what transpired that evening.

Q. What did she say transpired that evening?

A. Well, she said that evening there was a dice game at her house and that other individuals came during the evening, including Pat Gentile, Mike and Danny Bard, and a Sam Baker and another acquaintance of Sam's by the name of Elmer or Walter Baker.

She termed Sam Baker as a man who always carries \$5,000 on his person, and stays at the Stewart Hotel, and she was setting him up for a dice game with the other [286] boys.

Q. Was Rose there that evening?

A. Rose was at the house and Ted was at the house, also.

Q. Did she say anything further with regard to that night of April 13th?

A. Only that Sam Baker never did get into the game, and that nothing else transpired that night except the dice game, and maybe some drinking.

Q. What was her narrative with regard to the events on the following day, Thursday, April 14th?

(Testimony of Alfred G. Gunn.)

A. She told me on the 14th she and Ted—that is, Mrs. Heller and Ted—again went down town looking for new cars, this time at Oldsmobiles, and that they were gone most of the day, and returned with an Olds 88 demonstrator to try it out.

Q. Was Rose at the home that day also?

A. She says Rose stayed there, and that Rose was there when they got back in the evening.

Q. What did she tell you with regard to the events that evening?

A. She told me that the events of that evening were normal, and that they sat around and watched television, and that Ted and Rose and Mrs. Heller and the two children were at the home, and they watched television and went to [287] bed at a normal time, and nothing transpired in the way of partying, or dice or drinking, and so forth. She said at about two or three in the morning she received a phone call from a friend of hers from Alaska, a Mr. Clifford Warren from Anchorage, who said he was calling from the Stork Club in Seattle, and about six o'clock the following morning, the morning of the 15th, this Warren came to her home with Pat Gentile that morning.

Q. What did she say with regard to what happened that day, Friday, April 15th?

A. She told me that on Friday the 15th the ship, the General Polk, arrived in town, and that Ted Berg drove the Oldsmobile down to meet the ship and meet some of his buddies on the ship, and that later that afternoon, or that evening, she and Rose—



(Testimony of Alfred G. Gunn.)

that is, Mrs. Heller and Rose—and Ted Berg all went down to the Northern Lights in Seattle where they met several or some of the members of the crew of the ship, including a George Pearce, and that they were going to party, and that they were going to drive home to her home on Mercer Island, to change cars.

She didn't clarify why they were going to change cars, but that they went home to change cars; that when they got to the home George Pearce was the only seaman that had come with them earlier in the evening, and that he had been drinking heavily, and stayed at her home and went to bed; [288] and she told me that Rose also stayed there that evening with George Pearce and that Mrs. Heller and Ted returned to Seattle to meet other shipmates who were getting off the midnight watch of the General Polk.

She told me that they did meet these other shipmates, including the man she described as "Buzz," or "Buzzer," and also met Bob McSharry; and the four of them, Buzz or Buzzer, Bob McSharry, Ted Berg and Mrs. Heller went to her home at Mercer Island about two a.m. the morning of the 16th.

Q. Was Rose there at that time?

A. She told me Rose was there, and that George Pearce was there, and asleep; and that three other people had arrived between midnight and two a.m., Mike and Danny Bard, and Mike's girl friend, Barbara, and that they were there about two a.m. when she and the others arrived at the home.

(Testimony of Alfred G. Gunn.)

Q. Did she say whether or not any other woman arrived that night?

A. Later on in the morning she said another girl had come to the home, a Bonnie. She gave me the name of Bonnie to be Flo Richards. She told me Bonnie had driven out in her own car, which was a new Buick Special, and I asked her where Bonnie was, and she said at the time of the interview she was down with her mother at Clarkston, Washington, [289] and that she had previously lived in Seattle at the Walpole Hotel.

Q. What was Mrs. Heller's testimony with regard to the events that took place in her house in the early morning hours of Saturday, April 16th?

A. She told me that she, Mrs. Heller, went into the bathroom and found Rose in the bathroom with Buzz's wallet, and that she checked the wallet and found there were four fifty-dollar bills missing from it. She told me she asked Rose to give the money back, and she gave three fifty-dollar bills back and claimed she didn't have the fourth, and didn't know anything about it.

She told me Ted Berg then took one of his fifty-dollar bills and replaced the missing one in the wallet, and they put Buzz's wallet back in the bedroom where he was sleeping.

Some time an hour or so later she again found—she told me that Rose had gone into the wallet again and taken some of the money the second time. This time they asked Rose to give it back, and she told me that Rose claimed she did not have it, and that



(Testimony of Alfred G. Gunn.)

she did not produce it back for some time. She told me that Ted Berg searched the house for about one hour for it, and that they accused Rose of having it, and that at one time they had sat Rose down in the middle of the living room floor, taking some of her [290] clothes off, and that while sitting there she told me Rose spit a fifty-dollar bill out of her mouth.

Q. At any time during the course of your interview did Mrs. Heller tell you whether or not she knew Miss West had been a prostitute?

A. She told me that everybody knew—that is the way she put it—that everybody knew she was a prostitute, and that Ted had told her Rose was a prostitute when he first met her seven years ago, but that she stopped prostituting after she had her child about five years previously.

Q. Did Mrs. Heller say anything to you in this conversation you had with her with regard to her own activities in the field of prostitution?

Mr. Kosher: I object to this on the ground it is immaterial.

The Court: Will the reporter read the question?

Mr. Guterson: Whether or not there was any conversation between this witness and the defendant Heller with regard to her own activities in prostitution.

Mr. Kosher: No time and place fixed.

Mr. Guterson: During this time, March and April.

The Court: Objection overruled.

A. She told me that she did not want any pros-

(Testimony of Alfred G. Gunn.)

titution to take place at her home on Mercer Island, that she lived [291] there with her two children, and she did not want prostitution to take place there.

She did tell me that she had one regular customer that she had known for quite some time that she—that was a customer of herself; but that is the extent of what she told me about her prostitution.

By Mr. Guterson:

Q. During the course of this conversation with Mrs. Heller, did she indicate whether or not a man by the name of George Pearce was out at her home on the night of April 15th and the morning of April 16th? A. Yes, she did.

Q. Did she tell you the circumstances of where she met him?

A. Well, he is the one that went out there with them from the Northern Lights room, that when Ted Berg, Mrs. Heller and Rose had all gone down to the Northern Lights room on the night of the 15th, then they returned to her home—George Pearce returned to the home with them, and George Pearce went to bed because he had been drinking heavily, and Rose West stayed at the house, and Ted Berg and Mrs. Heller left.

She told me prior to going out to her home George Pearce had given her a fifty-dollar bill and that he still had seven fifty-dollar bills left, and three twenty-dollar [292] bills left.

She told me that the next morning after Rose West had run out of her home, or she ran out of the

(Testimony of Alfred G. Gunn.)

home about the same time as George Pearce awakened, and after she ran out of the home George Pearce checked his wallet and found some of his fifty-dollar bills were missing.

She told me George had told her that after Ted and Mrs. Heller had left that evening to come back to town, and Rose and George Pearce were alone in the house, that Rose had—this is what George Pearce told Vicky Heller—as Heller related it to me—that Rose had told George Pearce that Ted—

Mr. Kosher (Interposing): I object on the ground it is double hearsay, if your Honor please.

The Court: I don't know on what basis this would be admissible. I think you should forget any conversation she repeated.

Mr. Guterson: I think that is right.

The Court: Unless it has some bearing.

Mr. Guterson: That is perfectly right. I have nothing further.

### Cross Examination

By Mr. Kosher:

Q. Now, Mr. Gunn, where did this interview take [293] place?

A. At the Seattle office of the Federal Bureau of Investigation.

Q. Did you have a stenographer there at the time? A. No, I did not.

Q. Did you take down what this girl told you when you talked to her?

A. Yes, I did, in my own notes.

(Testimony of Alfred G. Gunn.)

Q. You just made your own notes on it. Do you have the notes with you? A. Yes, I do.

Q. Could I see them, please? Did you read these notes over before you came to court?

A. Yes, I did.

Q. Was that for the purpose of refreshing your memory about what she told you?

A. Yes, it was.

Q. Before you read these notes you didn't remember what she told you, did you?

A. I took the notes for the purpose of later being able to refresh my memory as to what was said, and this conversation took place last April 28th, and I read the notes yesterday, and glanced at them again this morning to refresh my memory as to what the conversation was.

Mr. Kosher: Your Honor, might I cross examine [294] this man after recess time, so that I could look these notes over? It will take some time.

The Court: You wish to cross examine him later?

Mr. Kosher: Yes.

The Court: Any objection?

Mr. Guterson: No, I have no objection.

The Court: You will be here, Mr. Gunn.

Mr. Volinn, do you wish to cross examine?

Mr. Volinn: I have no questions.

Mr. Guterson: It is all right with me. Mr. Gunn can be in attendance this afternoon.

The Court: You have another witness?

Mr. Guterson: Yes, I do.

(Testimony of Alfred G. Gunn.)

Mr. Kosher: Then I can give him his notes back later.

The Court: You have no objection to counsel keeping your notes?

The Witness: No.

(Witness excused.)

Mr. Guterson: Mr. Crisman.

CHESTER C. CRISMAN

upon being called as a witness for and on behalf of the plaintiff and upon being first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your full name, and spell your last name, please?

The Witness: Chester C. Crisman, C-r-i-s-m-a-n. (Spelling.)

By Mr. Guterson:

Q. Will you state your name, sir?

A. Chester C. Crisman.

Q. What is your home address?

A. 3015 West 77th, Seattle.

Q. What is your occupation?

A. Special Agent for the Federal Bureau of Investigation.

Q. How long have you been a member of the Federal Bureau of Investigation?

A. Since June, 1942.

Q. How long have you been assigned to the Seattle office?

A. Since April, 1953.

Q. In the course of your duties as a member of



(Testimony of Chester C. Crisman.)

the [296] F.B.I., Mr. Crisman, did you have occasion to interview the defendant, Cedric Theodore Berg?

A. Yes, sir, I did.

Q. Do you recall where that interview took place?

A. It took place in the County Jail here in Seattle.

Q. Do you recall the date of the interview?

A. May 12, 1955.

Q. Who was present?

A. Mr. Berg, Special Agent Dean Ralston from our office, and myself.

Q. Mrs. Heller was not present?

A. No, sir.

Q. What was your conversation with Mr. Berg with regard to whether or not he was acquainted with the defendant, Victoria Heller?

Mr. Kosher: I object to this on the ground it is hearsay as to the defendant Heller.

The Court: The Court will instruct the jury again, as I have before, that conversations testified to with only one defendant without the other defendant being present are to be considered only with respect to the defendant making the statement, and the testimony is not to be considered in connection with the guilt or innocence of the defendant not present, and the testimony is not binding in any respect upon them. [297]

The Witness: Now, would you read the question again, please?

The Court: Mr. Reporter, read the question.



(Testimony of Chester C. Crisman.)

(Whereupon, the following was read by the reporter: "Question: What was your conversation with Mr. Berg with regard to whether or not he was acquainted with the defendant, Victoria Heller?")

A. Mr. Berg said that he was acquainted with Victoria Heller, and had been since, roughly, the first of 1955.

By Mr. Guterson:

Q. Did you inquire of Mr. Berg as to where his home was?

A. Yes. He said that his usual place of residence was with his parents in Los Banos, California, but that since August, 1954, he had been shipping on M.S.T.S. vessels out of Seattle, and had been making his residence at various places in Seattle, including the home of Mrs. Heller on Mercer Island.

Q. Did you ask him whether or not he knew Rose West?      A. Yes, I did.

Q. What was his response?

A. He said that he had known Rose West for from seven to ten years.

Q. And where was it that he had come to know her? [298]

A. In and around Los Banos, California.

Q. What name did he say he knew her by?

A. He knew that her name was Rose West, but he also knew she used the name Dolly, being a first name. He didn't indicate any last name to go with the Dolly.

(Testimony of Chester C. Crisman.)

Q. Did he tell you whether or not he knew what kind of work she had done?

A. Yes, he said he knew that off and on during all of this period that he had known her she had worked as a prostitute.

Q. Did you ask him whether or not he had been to Los Banos recently?

A. Yes. I asked him that, and he said that when the General Polk had docked in Seattle on the 10th of March, 1955, he had immediately gone to California, to Los Banos, to see his folks and other friends there, and had arrived, he decided, on about the 13th, and had stayed approximately two weeks, and had come back to Seattle. He didn't want to estimate the exact arrival date back in Seattle, but approximately had a two weeks' stay in Los Banos.

Q. Did he state whether or not he had known Mrs. Heller before he went down to Los Banos on his vacation?

A. Yes.

Q. When again was it he met her? [299]

A. As he termed it, it was around the first of the year, 1955, without being very specific, and we didn't press him for any exact date.

Q. After he returned to Seattle, what did he say he did?

A. He went out to live at Mrs. Heller's house on Mercer Island, and waited for the General Polk to come back to port. She was at sea, apparently, or he said she was at sea.

Q. Late March and early April?

A. Yes, sir.

(Testimony of Chester C. Crisman.)

Q. Did you have any conversation with regard to whether or not he made any phone calls to Miss West while staying at Mrs. Heller's home?

A. Yes, sir. He said that he made four telephone calls to Rose West in Los Banos. He said that he made two of them from Mrs. Heller's home, and from Mrs. Heller's telephone on Mercer Island, and two others from pay stations.

He said one of them—one of the pay stations was in a service station down along the waterfront, and another was near Pier 39, I believe, but they were both pay telephones, he said.

Q. Did he say whether or not any of the calls were made while Mrs. Heller was with him?

A. He said Mrs. Heller did not talk to Rose over [300] the telephone, but as to whether or not she was present in the house when he made the telephone calls, I don't believe that he gave us any information on that.

We asked him specifically on the other phase of it.

Q. But he said she did not talk over the phone?

A. That is what Mr. Berg told me, yes, sir.

Q. Now, did he relate to you what conversation he had with Mrs. or Miss West regarding whether or not he told her he would send her any money?

A. Yes. He told me he was urging her on all these telephone calls to come to Seattle; and he told her he would send her \$60.00, and that he did, in fact, send her \$60.00 by Western Union money order.

(Testimony of Chester C. Crisman.)

Q. What did he say was the reason he wanted her to come to Seattle?

A. Berg told me he wanted her to come to Seattle so that they could get married.

Q. Did Mr. Berg tell you whether or not he had ever discussed with or told Mrs. Heller about Rose before Rose's arrival?

A. Yes, he said he had told Mrs. Heller about Rose, and that he was urging her to come to Seattle.

Q. Did he go into any more detail?

A. That is, about his urging her to come to Seattle?

Q. About what he told Mrs. Heller concerning Rose? [301]

A. He indicated he told Mrs. Heller what Rose's occupation had been, and how long he had known her, and things of that sort.

Q. Did he state whether or not Rose West did in fact come to Seattle?

A. Yes. He said she came to Seattle on the 13th of April, 1955.

Q. Did she call when she arrived in Seattle, according to Mr. Berg?

A. He told me she came by airplane, and when she got to the Seattle airport, she telephoned the Heller house on Mercer Island, using the telephone number he said he had given her; and she, he said, had talked—that Rose had talked with Mrs. Heller, and Mrs. Heller had given her the street address on Mercer Island, and told her to come out by cab.

(Testimony of Chester C. Crisman.)

He indicated he did not talk with her on the telephone call, but was present.

Q. You are relating——

A. (Interposing): His statement to me.

Q. Regarding the call from the Seattle airport to the house?

A. That is right.

Q. Did he state whether or not that was the first time that Rose had ever conversed with Mrs. Heller? [302]

A. Well, he told me that Rose and Mrs. Heller had not talked with each other on any of the telephone calls to Rose.

I don't recall asking him specifically whether that telephone call on the 13th was the first time they had ever talked to each other.

Q. I see. Did he tell you whether or not Rose ever came out to the house?

A. Yes, he said she came out by taxi, and he and Vicky and Mrs. Heller — he and Mrs. Heller were both in the house when she arrived.

Q. And that was early in the morning?

A. Yes.

Q. Did he tell you whether or not Rose stayed at the Heller residence?

A. He stated she stayed at the Heller residence until late in the morning of Saturday, the 16th.

Q. What conversation did you have with him with regard to the events which transpired during the period of Rose's stay at Mrs. Heller's home?

A. We questioned him concerning those events,



(Testimony of Chester C. Crisman.)

and he didn't go into very much detail, other than to say in response to a specific question that to his knowledge he did not know of Rose's having participated in any prostitution activities during that period of time. [303]

He said specifically he knew that there was drinking, there were parties on almost every evening during that period, but as to any more details than that, he didn't give them to me.

Q. Did you have any conversation with Mr. Berg with regard to Saturday morning, April 16th, and Rose West's leaving the Heller residence?

A. Yes.

Q. What did he say?

A. He said that early Saturday morning a party had organized — been organized at the home, and that there were several of his former shipmates from the General Polk there. He mentioned a man named Busby. As I recall, he didn't give me Busby's first name. He mentioned a man named Pearce, and said that Pearce's first name was George, and I think—well, he mentioned there were two or three others in the party, that there was a lot of drinking, and that there was a dice game organized.

Q. Did he indicate whether or not Rose was there?

A. He indicated Rose was there, and that he was there, and that Mrs. Heller was there, and that late in the party but early in the morning hours of Saturday morning it was discovered by Mrs. Heller that money had been stolen from Mr. Busby's wal-



(Testimony of Chester C. Crisman.)

let, and that he and Mrs. Heller had figured out that it was Rose that had taken the money, and that he [304] personally replaced some of the money, and then they got some more—they got some of it back from Rose, and completed filling the wallet to its original condition, and put it back on the dresser in the room where Mr. Busby was sleeping; and that subsequently further money was missing again, and that they again accused Rose of stealing the money, and were trying to search her, and they did search the room and the whole house, and eventually got all but one fifty dollars of the money back.

Then he said Rose broke away from them and ran away, and that—and from that time on he said she hadn't been back at Mrs. Heller's house on Mercer Island.

Q. Did he indicate whether or not he stayed there any further length of time?

A. Yes, he said he stayed there until he was arrested by King County Sheriff Office deputies, and that after he made bond on that charge, he went to work over near Port Angeles, and that he had—of course, that day, just come back, and had been tried in Superior Court, or in Justice Court, rather, in King County.

Mr. Guterson: I have nothing further.

#### Cross Examination

By Mr. Kosher:

Q. You have been on the F.B.I. a long time, isn't [305] that right?

(Testimony of Chester C. Crisman.)

A. I have been Special Agent since June, 1942.

Q. And you have handled a lot of these Mann Act cases, is that right?

A. I have investigated quite a few, yes, sir.

Q. And you were much concerned, were you not, when you investigated this man, about determining what his intention was at the time he called this young lady on the telephone, and asked her to come up to Seattle; isn't that correct?

A. I inquired about his intentions, yes, sir.

Q. And you did that in great detail, isn't that correct?

A. I certainly asked him.

Q. Did you ask him specifically what he had in mind when he called this number in California, and asked her to come to Seattle?

A. Yes, sir.

Q. What was his answer to that?

A. He wanted her to come up so that they could be married.

Q. At that time did he tell you that when he called this young lady on the telephone that he had in mind she should come to Seattle for the purpose of engaging in some illicit prostitution? [306]

A. No, sir. He told me specifically that he wanted her to come so that they could be married; and he specifically denied that she engaged in any prostitution up here.

Q. Now, you did specifically ask him, did you not?

A. Yes, sir.

Q. (Continuing): Whether or not he had in mind when he called her on the telephone to come up here and practice prostitution?

(Testimony of Chester C. Crisman.)

A. I asked him specifically.

Q. What was his answer to that?

A. That, "No, I didn't ask her to come up to practice prostitution."

Q. Did he tell you he had sent her \$60.00?

A. Yes, sir.

Q. And did he tell you he had sent it from the Western Union office?

A. Yes, sir.

Q. Now, he did not tell you that Mrs. Heller sent the \$60.00, did he?

A. No, sir.

Q. In fact, he told you that Mrs. Heller had nothing whatever to do with the sending of the \$60.00, didn't he?

A. I don't recall asking him that specific question, whether or not Mrs. Heller had anything to do with the \$60.00. He told me he sent it, and I don't recall asking [307] whether or not he got the—where he got the money, or anything of that sort.

Q. That was his response to the inquiry where the \$60.00 came from?

A. It came from him. He said he sent it.

Q. You didn't press him as to whether or not he got any part of it from Mrs. Heller?

A. I don't recall asking him that question; no, sir.

Q. Now, did you ask him about Mrs. Heller's home out at Mercer Island?

A. Yes.

Q. Did you ask him if that was a house of prostitution?

A. Yes.

Q. What was his answer to that?

A. No.

(Testimony of Chester C. Crisman.)

Q. He told you it was not a house of prostitution, didn't he—isn't that right?

A. That is what he told me, yes.

Q. Did you ask him whether or not he knew of any act of prostitution being committed on these premises out at Mercer Island?

A. By any specific person or in general?

Q. In general.

A. I think my question was worded differently than that. I asked him whether or not it was operated as a house of [308] prostitution, and when he said no, there was no point in asking whether—the question as you phrased it to me.

Q. Now, did you ask him whether or not he had given any inducement to Rose West to come up here for the purpose of practicing prostitution?

A. Well, I can't answer that question that way, because he told me he did not have her come up here to practice prostitution. He told me that he had sent her \$60.00 so that she could come up here.

Q. Did you tell him that you had learned, or had heard from her that she had committed some acts of prostitution up here in Seattle?

A. I don't think I did.

Q. You didn't ask him that?

A. No. He indicated at the very start of our conversation that he didn't want to give us a signed statement, so that our conversation with him was merely asking questions and recording his answers to it, without pressing him unduly.

Q. Did you make notes like Mr. Gunn did?

(Testimony of Chester C. Crisman.)

A. I kept notes of my interview, yes.

Q. You have those notes, too? A. Yes.

Q. Now, did Mr. Berg tell you in this conversation he had planned on buying a house out here?

Mr. Volinn: Just a minute. I would like to object to the testimony of Mr. Berg's refusing to give a signed statement. It was unsolicited, and it might be considered prejudicial to the defendant Berg; and I would ask the Court to have that remark stricken. It was not relative or germane to the question, for one thing.

The Court: I don't think it serves any purpose.

Mr. Guterson: Whatever your Honor decides.

The Court: I think that testimony as to the defendant Berg's refusal to sign a statement may be stricken and the jury will disregard it.

By Mr. Kosher:

Q. Did you ask Mr. Berg whether or not he had ever accepted any of Rose West's earnings while she was working down in Los Banos in a house of prostitution? A. I asked him that, yes.

Q. What, if anything, did he tell you of that?

A. He said he had never accepted any of her earnings.

Q. Did he also tell you that Rose had stopped practicing prostitution, as far as he knew, just before the baby was born?

A. As I recall my conversation with him, the baby did not enter into it. He told me that she had practiced prostitution to his knowledge off and on during the entire period that he had known her,



(Testimony of Chester C. Crisman.)

which was from seven to ten [310] years, and that was the way the question was phrased, and as I recall, that was the only conversation regarding that phase of it.

Q. Now, had you interviewed Rose West before you talked to Mr. Berg?           A. Yes.

Q. And had you learned that she, in fact, had not practiced prostitution for a number of years before she came up to Seattle?

A. A number of years? She had indicated to us that after her baby was born she had then practiced prostitution.

Q. Did she tell you how old her child was?

A. Yes, I am sure she did. At that time I believe it was just about the third birthday of the child.

Q. Did you tell, or ask Mr. Berg whether he knew she had not practiced prostitution in the last three years?

A. Not in those terms, no, sir.

Q. That was quite an important aspect of your investigation, wasn't it, sir?

A. Well, I didn't ask him the question in that specific term.

Q. You didn't deem it important, is that right?

A. He told me he knew that she had worked as a prostitute, and that he had not caused her to come up here to work as a prostitute, so I didn't press him on the questions.

As I indicated earlier, we took his story to us without pressing the details.



(Testimony of Chester C. Crisman.)

Q. Did he tell you in the same interview that during the years he had known Rose West he had given her practically all of his earnings as a seaman? A. No, he didn't tell me that.

Q. Did he tell you he had given her any money at all?

A. My recollection is he said he had not given her any money, although they had been on dates, and he had spent money on her.

Q. Now, with respect to these telephone conversations that he is alleged to have had with her, did he go into detail on any of those?

A. I asked him about them, yes.

Q. And he told you he had three telephone conversations? He had three telephone conversations with her from Mrs. Heller's home?

A. No, he told me he had two from Mrs. Heller's home.

Q. Two from Mrs. Heller's home; did he tell you when the first conversation was had?

A. He was unable to recall the dates except that they were probably within a ten-day period of her arrival up here. [312]

Q. Did he tell you what was said in this first conversation?

A. All he would indicate was that in general terms he was urging her to come to Seattle.

Q. Urging her to come?

A. Urging her to come.

Q. Did he say how he urged her to come?

(Testimony of Chester C. Crisman.)

A. He told her he wanted her to come up to Seattle.

Q. Is that what he told you that he told her on the telephone, "I want you to come up to Seattle?"

A. Yes, "I want you to come up to Seattle."

And he told her he would send her \$60.00. That is what he told me,—so that she could come up to Seattle.

Q. Did he say how she was to come?

A. Yes. He said that she was going to fly, that they had decided, when she was sent the \$60.00, that she was to fly up.

Q. Did he say how she was to fly up here?

A. By what air line, do you mean?

Q. Yes.

A. Not to my knowledge; not to my recollection.

Q. And you specifically recall that Mr. Berg told you that when he talked to this lady down in California that Mrs. Heller did not talk to her; isn't that right? [313]

A. Yes, sir.

Q. And he also told you that as far as he knew after she arrived in Seattle she did not practice prostitution?

A. That is what he told me.

Q. Now, did he tell you whether or not she was intoxicated during the time that she was up here—those three or four days?

A. He told me that she had been doing a lot of drinking at the house on Mercer Island, yes.

As to her exact stage of intoxication, it wasn't discussed.

(Testimony of Chester C. Crisman.)

Q. Did he lead you to believe in his conversation with you that his intentions as to this girl were honorable—is that what he conveyed to you in his conversation?

Mr. Guterson: Your Honor, this calls for a conclusion.

Mr. Kosher: I will withdraw it, counsel.

By Mr. Kosher:

Q. (Continuing): Did he tell you in so many words that his dealings with this girl during the time that he visited her in Los Banos and the time he came up here to Seattle and called her on the telephone and sent her the \$60.00, were done with an honorable motive on his part? Did he tell you that? [314]

A. Well, he told me that he wanted to marry her.

Mr. Kosher: That is all.

One other question.

By Mr. Kosher:

Q. Did he tell you they went out to look for a house? I don't know whether I asked you that or not.

A. Here?

Q. Yes.

A. No, he didn't mention going and looking for a house here.

Q. Did he say anything about buying a house on his G.I. Bill?

A. No, I am sure he didn't mention that to me at all.

(Testimony of Chester C. Crisman.)

Q. Did he say anything to you about having her baby come up here?      A. No.

Mr. Kosher: I think that is all.

Mr. Volinn: I have just a few questions.

Cross Examination

By Mr. Volinn:

Q. You people went up to the County Jail May 12th last to see Mr. Berg, is that right?

A. Yes, sir. [315]

Q. You and who else?

A. Special Agent Dean Ralston from our office.

Q. And that was your own idea; he did not invite you—is that correct?

A. No, he didn't invite us.

Q. And at this time what conversation—at the time of the conversation had he been charged with any Federal crime?

A. Had he been charged with any Federal crime?

Q. Yes.

A. Yes, there was a warrant in existence for his arrest on charges of white slavery.

Q. And you went to see him pursuant to your investigation of those charges?      A. Yes, sir.

Q. The charges were just made as you went out to conduct further investigation, I take it?

A. Yes. I can't tell you the exact day or date our warrant was issued, but it was issued prior to our talking with Mr. Berg at the County Jail.

Q. When you discussed the matter with him,

(Testimony of Chester C. Crisman.)

did you say to him initially that anything he told you might be held against him?

A. Yes, sir. After we had introduced ourselves and shown him our credentials, and identified ourselves, [316] we told him we wanted to talk with him about Rose West; and that he didn't have to talk with us if he didn't want to, and that anything he told us could be used against him in court, and that he had a right to have his attorney present if he so desired; and also that we would like to reduce the whole matter to writing, and have him sign it, and we would witness it.

We also warned him—excuse me—warned him about Section 1001, of Title 18 of the United States Code, which involves the furnishing of false information to government investigators in connection with official business.

Q. You did warn him there would be a penalty attached if he did not tell you the truth; and did he show that he understood what you stated with respect to this section?

A. He indicated he understood the matter we were discussing with him, about his rights and his obligations.

In fact, he said that his attorney had told him that it would be better if he did not sign anything, but that he was willing to talk with us.

Q. Do you know the name of the attorney who represented him then? It wasn't I, was it?

A. I don't believe that he mentioned the name

(Testimony of Chester C. Crisman.)

of his attorney. I wouldn't be positive. I know that it wasn't you. [317]

Mr. Volinn: I have no further questions.

Mr. Kosher: I have no further questions.

The Court: Any redirect?

Mr. Guterson: Nothing.

The Court: That is all, then, Mr. Crisman. You may be excused.

(Witness excused.) [318]

\* \* \* \* \*

EDWARD L. BREEN, JR.

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Guterson:

Q. Will you state your full name, sir?

A. Edward L. Breen, Jr.

Q. And what is your address?

A. 1532 35th Avenue South, Seattle, Washington.

Q. What is your occupation?

A. I am a Special Agent with the Federal Bureau of Investigation, here in Seattle.

Q. How long have you been a member of the F.B.I.?

A. Four and three-quarter years, approximately.

Q. How long have you been located in Seattle?

A. Since April, 1952.



(Testimony of Edward L. Breen, Jr.)

Q. In the course of your duties as a Special Agent of the Federal Bureau of Investigation, Mr. Breen, did you have occasion to interview the defendant, Victoria Heller, with regard to this case?

A. I did, sir.

Q. When was that?

A. August 25, 1955. [330]

Q. Where did the interview take place?

A. At our office, 1015 Second Avenue.

Q. Who was present?

A. Myself and Special Agent Henry Blastie.

Q. And Mrs. Heller? A. Yes, sir.

Q. Was the defendant Theodore Berg present?

A. No, sir, he wasn't.

Mr. Volinn: At this point, your Honor, I will again ask that the Court invite the attention of the jury to statements made outside the presence of one of the defendants.

The Court: Again, members of the jury, it appears that conversations may be related here that will involve only one defendant. It is not to be considered by you with respect to the other defendant not present.

Mr. Volinn: Thank you, your Honor.

The Court: You may proceed.

Mr. Guterson: Thank you, your Honor.

By Mr. Guterson:

Q. On that occasion, Mr. Breen, did you have any conversation with Mrs. Heller regarding a trip that the defendant, Mr. Berg, made to Los Banos, California, in March, 1955?

(Testimony of Edward L. Breen, Jr.)

A. I did, sir. [331]

Q. Will you relate that conversation?

A. Mrs. Heller told us that Mr. Berg had left Seattle, Washington, for Los Banos, California, during the last of February or first of March and was gone approximately 16 days. He went to Los Banos to see his mother who, at that time, according to Mrs. Heller, was undergoing an operation, and that Mr. Berg, upon his return to Seattle, had hold her——

Mr. Volinn: Excuse me, your Honor. This is purely hearsay.

The Court: I suggest you may omit what Mr. Berg said if it can be done and give continuity to the statements.

A. (Continuing): Mrs. Heller advised that arrangements had been made at Los Banos for Rose West to come up to Seattle while Mr. Berg was there.

Mr. Kosher: I object to that latter statement, your Honor. It is obviously hearsay.

The Court: It would appear to be a conclusion.

Mr. Volinn: Yes, your Honor.

It is very objectionable.

Mr. Guterson: That is why we would prefer for him to relate the words Mrs. Heller told him.

The Court: Yes. I think it may be necessary for him to do it.

Mr. Guterson: I think it is, in this case. [332]

The Court: I might advise the jury in conversations with a defendant when in the course of that

(Testimony of Edward L. Breen, Jr.)

conversation that person repeats what allegedly was told to them by another defendant, that conversation is hearsay entirely as to the person who allegedly made the statement and should be ignored with respect to that defendant.

Mr. Volinn: I would like it noted that my objection stands.

The Court: In other words, is it your contention that because she happened to say something that Mr. Berg said that that makes the whole statement inadmissible?

Mr. Volinn: My basic contention is that I don't know what he is going to say, but it is hearsay and may be so prejudicial that it might be the basis for a requested mistrial.

The Court: Well, you may make such a motion if you think proper at the time. I do instruct the jury, however, that this conversation, whatever it may be, with Mrs. Heller has no effect or no binding effect whatsoever and should be ignored completely insofar as Mr. Berg is concerned.

Mr. Kosher: May the record show an objection on behalf of the defendant Heller on the ground that what the witness is attempting to relate is double hearsay?

The Court: This is a conversation with Mrs. [333] Heller, as I understand.

Mr. Guterson: Yes, sir.

The Court: And the conversation will be confined to what Mrs. Heller told this witness in the

(Testimony of Edward L. Breen, Jr.)

course of his conversation, the circumstances of which he has already related.

The objection is overruled.

By Mr. Guterson:

Q. Will you relate and tell the Court and jury what Mrs. Heller said to you with regard to the trip Mr. Berg had made to Los Banos?

A. Mrs. Heller told me that during the latter part of February, 1955, or the first part of March of that year, Mr. Berg left Seattle for Los Banos, California, to see his mother, who allegedly at that time was undergoing an operation; that upon his return to Seattle about 16 days later, he told her that arrangements had been made while he was at Los Banos for Rose West to come to Seattle.

Q. With regard to the same conversation between yourself and the defendant Victoria Heller, Mr. Breen, did you have any conversation with her regarding any telephone calls from Seattle to Los Banos, California, in the early part of April, 1955?

A. I did, sir.

Q. Will you relate that conversation? [334]

A. Mrs. Heller told me that during the first part of April Mr. Berg made numerous telephone calls from her home to Rose West at Los Banos, California, and that on at least one occasion she talked to Rose at Los Banos.

On that occasion Mr. Berg introduced her over the phone by saying, "This is Vicky," and that at that time she talked to the person on the other end of the line and said, "Why don't you come up

(Testimony of Edward L. Breen, Jr.)

here?" or words to that effect. I believe those were the words.

Q. With regard to the same conversation between yourself and the defendant, Victoria Heller, did you have any conversation with her with regard to the sending of a Western Union telegram, and the sending of \$60.00 from Seattle to Los Banos by Mr. Berg? A. Yes, sir.

Q. Will you relate that conversation?

A. During the same month, the month of April, 1955, Mrs. Heller advised me that Pat Gentile, who was at that time at her house, took Mr. Berg from her home to the Western Union office here in Seattle, where Mr. Berg sent a telegram to Rose West—a money order telegram.

Mrs. Heller further stated that Mr. Berg received \$60.00 from a friend whose name she did not wish to disclose, and that—

Q. (Interposing): A friend of hers? [335]

A. That is right.

And subsequent to that, within 24 hours, Mr. Berg received a check for \$78.00 from M.S.T.S., whereby he repaid the initial loan of \$60.00.

Q. At the time of the same conversation between yourself and the defendant, Victoria Heller, did you have any conversation with her regarding the trip and the going to her home in the early morning hours of Saturday, April 16th, 1955? By herself and Mr. Berg and others in the party?

A. I did, sir.

Q. Will you relate that conversation?



(Testimony of Edward L. Breen, Jr.)

A. Mrs. Berg stated that she, Mr. Berg, Mr. McSharry and Mr. Busby were at the Stork Club up until approximately four o'clock a.m., and that they left the Stork Club to go in her new Oldsmobile and proceeded to her home on Mercer Island; and that when they got to her home, Mr. McSharry asked her to get a date for Mr. Busby, and that she then phoned a girl by the name of Bonnie, whose true name she stated to be Flo Richards, who at that time was living at the Town House Apartments.

Mrs. Heller stated she had her telephone number, and would furnish it to me when she left our office and went home.

She further explained she knew this girl to be [336] a prostitute, and had called her on other occasions to fill dates with men, but that the girl had not been available, due to her other activities; that this was one of the last girls to be arrested for prostitution out of the Olympic Hotel in town in December or November, 1954.

She described this girl as being a blonde over in Eastern Washington who was employed in a service station and whose husband was employed by the Merchant Marine. She said the girl spoke with a southern accent, and when she left the area of Seattle went to Aberdeen, Washington, to work in houses of prostitution.

This girl—excuse me—if I may continue?

Q. Yes.

A. Mrs. Heller advised over the phone she told



(Testimony of Edward L. Breen, Jr.)

this girl she had a \$25.00 guarantee, and after telling her, this Bonnie came out to her home.

Mr. Guterson: I believe I have nothing further.

### Cross Examination

By Mr. Kosher:

Q. Now, did you ever make any attempt to contact the girl who was given to you as Bonnie Richards, or Flo Richards? A. We have, sir.

Q. Were you ever able to locate her? [337]

A. No, sir. We were able, however, to identify her.

Q. You were able to identify her; did you make any notes when you talked to Mrs. Heller?

A. I did, sir.

Q. And was that after she had been charged in this court with the commission of the crime you had this conversation with her?

A. Yes, sir; the conversation was on the date of August 25th.

Q. Was she represented by counsel at that time?

A. No, she wasn't, sir.

Q. Did you tell her she ought to have a lawyer before she talked to you?

A. Yes, sir. Mrs. Heller's rights were fully explained to her at the time she entered our office and sat down for the interview.

In fact, at that time we told Mrs. Heller if she cared to have a stenographer present, we would be very happy to furnish her with a result of the interrogation. It was entirely up to herself.

(Testimony of Edward L. Breen, Jr.)

Q. Had you consulted with Mr. Gunn at the time you interviewed Mrs. Heller?

A. Mr. Gunn and I worked as partners at times here in Seattle.

Q. You knew, did you not, she had already made [338] a statement to Mr. Gunn—is that correct?

A. That is correct, sir.

Q. And that the statement she made to Mr. Gunn wasn't exactly like she made to you, is that right?

A. The main reason for Mrs. Heller coming to our office was to resolve the inaccuracies and to possibly amplify on the statement given to Mr. Gunn.

Q. At that time in that conversation with her, did she tell you that she intended for this girl West to practice prostitution in Seattle?

A. For Rose West?

Q. Yes.           A. No, sir.

Q. What did she tell you about Rose West coming here to Seattle?

A. Mrs. Heller told me that the reason Rose West came to Seattle, that the reason she knew Rose West came to Seattle, was to marry Mr. Berg.

Q. And did she tell you so far as she knew Rose West didn't practice prostitution in Seattle?

A. Didn't practice prostitution in Seattle.

Q. And didn't she tell you she did not use her home as a house of prostitution?

A. That is correct, sir.

(Testimony of Edward L. Breen, Jr.)

Q. And didn't she tell you at that time that she [339] herself was not a prostitute?

A. At that time, yes, sir.

Q. Didn't she also tell you that at the time Miss West came it was expected she would bring with her her child?

A. No, sir; she did not say that.

Q. Well, now, you say that she told you that her purpose in coming to see you was because she wanted to correct some discrepancy in the story she told to Mr. Gunn?

A. No, that wasn't her purpose in coming to see me. Her purpose in coming to see me, as I understand it, was to give us a signed statement based on the oral statement she furnished Mr. Gunn.

Q. Well, now, as a matter of fact, she didn't sign any statement in your office, did she?

A. No, sir, she didn't.

Q. Isn't it a fact she told you that the reason she came to see you was that someone informed her that you had been making remarks about her two boys?

A. Previous to the phone call I received from Mrs. Heller I talked to Geraldine Scheuman, who lives at the Cliff Apartments.

Mrs. Heller called me and said she had conversed with a certain party I talked to about her children, and I explained to her that our interest lay not with her children, [340] but in proving a violation of Federal law, and that we were not interested in her children in any regard.

(Testimony of Edward L. Breen, Jr.)

Q. Didn't she tell you in this interview that whatever else she might have been in her lifetime she would not permit any prostitution to be carried on in the presence of her children?

A. I am not sure, sir, if she worded it in that way. Mrs. Heller told me there was no prostitution carried on in her home.

Q. Didn't she tell you that her two children lived with her out at that house?

A. She did tell me.

Q. Did she tell you that at no time did she send any money to Rose West to come up here on?

A. Mrs. Heller was not asked whether she sent the money to Rose West to come up here on. She was asked if she had any knowledge about the sending of a telegraphic money order to Rose West from Seattle here.

Q. Did she tell you when she gained that knowledge?

A. No, the specific time was not stated.

However, she did point out to me that on the morning that Mr. Berg sent the telegram, he was taken from her home by Mr. Gentile to the telegraph office for that purpose.

Q. Did she tell you she learned that after she was [341] arrested and after she talked to Mr. Gentile?

A. The time element was not discussed.

Q. I see. Then you don't know now whether she knew at the time she told you or allegedly told you she had knowledge whether she had it at the

(Testimony of Edward L. Breen, Jr.)

time the money was sent, or whether she learned it afterwards?

A. I only know she told me Mr. Berg was at her home and left from her home with Mr. Gentile to send a money order to Miss West at Los Banos.

Mr. Kosher: I think that is all.

Mr. Volinn: No questions.

Mr. Guterson: Nothing further, your Honor.

The Court: That is all, Mr. Breen.

(Witness excused.)

Mr. Guterson: If the Court please, at this time the government rests. [342]

\* \* \* \* \*

## VICTORIA RUTH FOUGHTY HELLER

upon being called as a witness for and on behalf of the defendant, and upon being first duly sworn, testified as follows:

### Direct Examination

By Mr. Kosher:

Q. Will you state your name, please?

A. Victoria Ruth Heller.

Q. Where do you live, Mrs. Heller?

A. At 4140 84th Southeast, Mercer Island.

Q. Would you mind telling the court reporter how old you are?      A. 31 years old.

Q. And have you any children?

A. I have two children.

Q. And what are their names?

A. Donald and David.



(Testimony of Victoria Ruth Foughty Heller.)

Q. And where did these children live prior to—where did those children live in April 1955?

A. Prior to April? They—well, they lived wherever I have lived, always. We had a cottage on the beach, and I lived with my family for some time since separation from my husband.

The Court: Keep your voice up so that everyone can hear you. [396]

The Witness: Thank you.

By Mr. Kosher:

Q. Were they living with you on Mercer Island in the early part of April, 1955? A. Oh, yes.

Q. And do the children go to school there?

A. Yes.

Q. And in what classes are they?

A. The eighth grade and the fourth grade now.

Q. Now, you were born where, Mrs. Heller?

A. I was born in Rainier, Oregon.

Q. And where did you go to school?

A. I went to school in Longview, Washington.

Q. And where did you go to school?

A. I went to school in Longview, Washington.

Q. You were married to a man by the name of Pettus at one time? A. Yes.

Q. And that is Donnie's father? A. Yes.

Q. And Mr. Pettus lived in Snohomish?

A. He is a railroad man there.

Q. And that has been for many, many years?

A. Yes. [397]

Q. And you were married again? A. Yes.

Q. And he is the father of the little boy?



(Testimony of Victoria Ruth Foughty Heller.)

A. Yes.

Q. And he is in Michigan?

A. He is a business man in Michigan.

Q. Have you worked in the State of Washington?

A. I worked in a dentist's office in between my two marriages, in Dr. Goodwin's office, the dental assistant.

Q. Calling your attention to January of 1955, did you know a man by the name of McSharry?

A. Yes; I had known him since the previous June.

Q. What did Mr. McSharry do for a living?

A. He was a quartermaster on an M.S.T.S. ship.

Q. Did you keep company with him?

A. Starting in July, yes.

Q. And did you and he plan to get married?

A. Yes.

Q. And as a result of that, did you and he buy this house over on Mercer Island?

A. Yes. We were going to be married in December. We bought the house at the end of October. We bought it in his name because we were not going to occupy it as a family dwelling until we had been married. [398]

Q. During the time you knew Mr. McSharry, did you become acquainted with some members of the ship upon which he sailed?

A. Oh, many of his friends.

Q. Were most of his friends seamen?

A. Yes.

(Testimony of Victoria Ruth Foughty Heller.)

Q. And you necessarily became acquainted with them, is that correct?      A. Yes.

Q. And was it customary for the seamen to have little drinking parties, and so on?

A. Yes, for four or five months we hadn't—I hadn't met very many of the people he sailed with. We were staying at home quite a bit and going to other people's homes, and with couples; and then after the house was bought and the arrangements were quite well made, this meeting was with just the fellows, and the drinking started.

Q. And was there a good deal of drinking, as a matter of fact, on these parties?

A. Well, after Mr. McSharry had a little difficulty in January, I would say there was quite extensive drinking while the Polk was in port.

Q. And did you then meet a man by the name of Berg?      A. Yes.

Q. And so that the record will be clear, was there [399] ever any romantic connection between you and Mr. Berg?      A. Absolutely not.

Q. Now, was he a friend of Mr. McSharry's?

A. Yes.

Q. Is that how you met him?      A. Yes.

Q. Now, do you recall when you first met Mr. Berg?

A. Whenever the Polk was in port, which I think was very near the end of January 1955.

Q. Did you and Mr. McSharry see him from time to time?

A. Well, yes. The next trip, however, Mr. Mc-

(Testimony of Victoria Ruth Foughty Heller.)  
Sharry and I had had a little difficulty through my not—previous to that time it had been our custom since the previous June to exchange letters every day while he was gone, and I had neglected to write, and there was a matter of personal feeling, and I didn't see a great deal of Mr. McSharry during that February trip.

Q. I see. Now, during the time that you met Mr. Berg, did you know what his occupation was?

A. Oh, yes.

Q. What was his occupation?

A. He was an oiler on an M.S.T.S. ship for the government.

Q. When you first met him and thereafter, did you [400] have any reason whatever to believe he was a procurer of any type?      A. No.

Q. Or, to use a very vulgar term, did you know him to be a pimp?      A. No.

Q. Did you ever hear him talk about his girl by the name of Rose West?      A. Yes.

Q. Can you tell us when you first heard this name Rose West from him?

A. I think as Ted and I became friends that we, that because there was no romantic interest, I think that he confided in me very soon in the friendship.

It was my understanding, and I am sure that it was true that he had known Rose West for seven or eight years, anyway. It was only a period about four or five years, I understand, that they had kept

(Testimony of Victoria Ruth Foughty Heller.)  
quite a deal of company and the romance had progressed.

Q. I see; now, at any time did he tell you that she had been a prostitute?

A. He told me that before—and I would say some time before—and through the carrying period with her baby that she had been a prostitute, that she had worked as a prostitute, that she had worked as a waitress. [401] That was all I really knew about the girl at the time.

Q. Did he say anything about wanting her to come up here to Seattle?

A. Yes, and it wasn't only Ted.

The Court: Just a minute. Answer the question.  
By Mr. Kosher:

Q. Answer that. Did he ever tell you he wanted her to come to Seattle?      A. Yes.

Q. How many times did he tell you that?

A. One thousand.

Q. Did he tell you what he wanted her to come up for?

A. He was in love with her, and wanted to marry her.

Q. Did he ever talk to you about getting a house or an apartment?      A. Yes, yes.

Q. Now, where was Mr. Berg living in the early part of April, 1955?

A. Mr. Berg had taken a trip off of his ship because——

Mr. Guterson (Interposing): I will object. It is not responsive.

(Testimony of Victoria Ruth Foughty Heller.)

The Court: Listen to the question, and then [402] answer the question.

By Mr. Kosher:

Q. Some time in the early part of April do you know whether or not he took a trip?

A. He was living on the Polk.

Q. All right. Now, at that time did he make a trip to Los Banos, California? A. Yes.

Q. Did he tell you what he was going to Los Banos for?

A. His mother was undergoing some sort of surgery, and to see his girl.

Q. And did you see him after he returned from this trip to Los Banos? A. Yes, that day.

Q. You saw him the day he returned; do you remember what day that was, Mrs. Heller?

A. I would say about ten days, maybe twelve days, previous to the time Rose West arrived.

Q. Now, did he come out to your house to stay after that? A. I invited him out.

Q. And what was your reason for having him come out?

A. Because he was a seaman, a friend of Mc-Sharry's, waiting for his ship, and I felt it was a very nice friendly [403] gesture. Like all seamen, he didn't have a great deal of money, and I thought it was just a nice gesture.

Q. And while he was at your house, did you ever make any telephone calls to a woman by the name of Pat West or Rose West? A. No.

Q. Now, you heard Mr. Gunn on the witness



(Testimony of Victoria Ruth Foughty Heller.)

stand here, did you? A. Yes, I heard him.

Q. And you heard him testify that you had talked to Rose West down in California on the telephone. Will you state whether or not you ever told Mr. Gunn that you had talked to her on the telephone? A. No.

Q. Now, you heard the other gentleman from the F.B.I., who said you talked to him at one time. You heard him say that you told him that you had talked to Rose West on the telephone.

Will you tell the jury whether you ever made any such statement to that man?

A. I never even talked to that man at all. You mean Mr. Breen?

Q. Yes.

A. No, I told neither of them that I spoke to Rose West. [404]

The Court: What was the statement—you never talked to him at all?

The Witness: I thought he was referring to another man, your Honor.

By Mr. Kosher:

Q. I am referring to the agent who testified here that you told him that you had talked to Rose West on the telephone?

A. To neither of them did I ever make any statement that I had talked to Rose West on the telephone.

Q. Did you ever talk to Rose West on the telephone from your home to Los Banos, California?

A. Never. I talked to her from the airport.



(Testimony of Victoria Ruth Foughty Heller.)

Q. Now, did Mr. Berg tell you some time in the early part of April that Rose West was going to come up here? A. Yes.

Q. And did he tell you he was going to marry her?

A. Yes, she was coming up with the child.

Q. Now, referring to—you heard the testimony of Rose West, did you not? A. Yes.

Q. Did you ever tell her on the telephone that she could come up and live in your house and the words to this effect, "that she could practice prostitution, and [405] everything would be all right"?

A. No.

Q. Did you ever have any discussion with her with reference to practicing prostitution?

A. May I answer this in my own words?

Q. Yes.

A. On occasions when Rose was at my home and was drinking and referred to things she had done and people that she accused of having stayed with her, I had quite an argument with the girl.

Q. Now, do you recall the day that she arrived?

A. Yes; on a Wednesday morning.

Q. Let me go back. Did you ever send her any money? A. Absolutely not.

Q. Did you ever give anybody any money to send her? A. No.

Q. Did you know that anybody had sent her any money to come up here on?

A. Not at the time.

(Testimony of Victoria Ruth Foughty Heller.)

Q. Did you learn later that the money had been sent to her?      A. Yes, later I did learn.

Q. Now, at any time you talked to Mr. Berg, did he ever tell you he wanted this girl to practice prostitution in Seattle?      A. No. [406]

Q. Did he ever discuss with you the fact that he might want her to engage in prostitution any place?      A. No.

Q. Did he ever discuss with you the fact that she might bring her little girl up here?

A. Yes.

Q. And did he talk about that frequently?

A. (Witness nodded in the affirmative.)

Q. Now, with reference to the morning of the 13th of April, 1955, did you see Rose West?

A. Yes. She called. Yes, I saw her when she arrived at my home.

Q. Did she make a telephone call to your house?

A. She had called me from the airport, and she had just gotten into town, and when she arrived at the house it was very close, very close to seven.

Q. In the morning?      A. Yes.

Q. What, if anything, were you doing when she arrived?

A. I know what I was doing. For one thing, when she arrived at the house I know my older boy was in the shower. He left the house at seven-thirty for school—to catch the school bus. I was fixing breakfast, and in the [407] process of getting the children off to school.

Q. Now, did she arrive in a taxi?      A. Yes.

(Testimony of Victoria Ruth Foughty Heller.)

Q. And did you get a chance to look at her when she came in the house?

A. Only a glance from the hallway. I felt that that was Ted's and her minute together.

Q. After you got the children off to school, did you have a chance to see and observe her?

A. Yes. And at that time——

Q. (Interposing): Well, did you have a chance to observe her? A. I did.

Q. And what was her condition?

A. She was intoxicated.

Q. Now, did she ask for anything to drink?

A. We were having breakfast, and I offered her breakfast. She told me that if I happened to have a drink in the house, she would prefer the drink.

Q. Did you give her a drink then?

A. Certainly, I did.

Q. Now, Mrs. Heller, how long did you stay in the house with Rose Berg on Wednesday? Bear in mind, that is the day she arrived.

Mr. Guterson: Just a minute. Her name is not Rose Berg. [408]

Mr. Kosher: Excuse me. Rose West.

A. I was in the house I would say approximately until and very close to eleven-thirty that morning.

By Mr. Kosher:

Q. And then what did you do?

A. Mr. Berg, who had offered to help me select a car, and I, went down town in a cab, and

(Testimony of Victoria Ruth Foughty Heller.)

looked at Pontiacs and Dodges for almost a complete day.

Q. Now, on that day did you stop in to the Firelight Room?           A. Yes.

Q. And at about what time did you stop in the Firelight Room?

A. After the — I am not just exactly sure. Through the course of looking for the cars and trying to decide and going through the pamphlets on the cars we did stop there and were there for some time.

Q. Now, on Wednesday at any time did you discuss with Rose West the fact that she could practice prostitution in your house?

A. Absolutely not.

Q. And did you tell her that if she practiced prostitution in your house that you would take three dollars out of every ten dollars that was earned?           A. No. [409]

Q. And that if she practiced prostitution down town or some place else, you would take four dollars out of her ten dollars?           A. No.

Q. And did you ever talk to a man on the telephone that afternoon and invite him to come out and have intercourse with Rose West?

A. I don't recall talking to anyone. I wasn't even home.

Q. Well, answer my question.           A. No.

Q. You did not. Now, about what time did you get home? About what time did you get home Wednesday evening?

(Testimony of Victoria Ruth Foughty Heller.)

A. It was within a few minutes of nine o'clock.

Q. Had you made a call home prior to that time?

A. I had made several calls home.

Q. Did you talk to Rose West on the telephone?

A. Yes. I primarily talked to my son.

Q. Before you went down town—can I ask you this—did you have some dinner in the oven?

A. Yes, I had put one-half a ham in there.

Q. After you got home at nine o'clock, what happened?

A. Should I just tell in my own words?

Q. Yes; go ahead and tell in your own words.

A. The cab driver who brought us back to the house knew that we had been down town the entire day looking and trying to select a car.

This particular cab driver told me about a gentleman friend of his who does get fairly good prices, I believe the wholesale price, on Chevrolets, that they purchase for the cab company, and told me that he would be very happy to have the man talk to me. Shortly after getting home he called me and told me if it wasn't too late, that he would like to bring the fellow out so that we could discuss the car. The man was not going to be available the next day.

Q. Did the man come out that evening?

A. Yes.

Q. About what time did he come?

A. Very shortly afterwards; around eleven, I would say.

Q. Did you talk to him about purchasing a car?



(Testimony of Victoria Ruth Foughty Heller.)

A. Yes.

Q. And then what happened?

A. Well, I didn't like it any better than the Dodge or Pontiacs, and dismissed it from my mind.

Q. What was Rose West doing all this time?

A. Acting terribly.

Q. Had she been drinking while you had been gone? [411]

A. All day long. At the time——

Q. (Interposing): And——

(Whereupon, there was a brief pause.)

Q. (Continuing): ——did you try to get her to go to bed? A. She left the house.

Q. Did she leave the house? About what time did she leave the house?

A. Probably very close to twelve o'clock.

Q. Where did she go, do you know?

A. No, I still don't know.

Q. And what time did she return to the house?

A. After——

Q. (Continuing): If she returned at all?

A. After one o'clock. Two o'clock, I would say.

Q. And who was with her when she came?

A. She had two gentlemen, two Mr. Bakers, who were not related.

Q. Do you know who this Mr. Baker was?

A. Yes, he was a contractor from Alaska. The younger Mr. Baker is a friend of the older Mr. Baker's son.

Q. What was Rose's condition when she came home?



(Testimony of Victoria Ruth Foughty Heller.)

A. Worse than when she left. Drunk.

Q. Will you state whether or not she attempted to go back down town again? [412]

A. She went—when the men left—he and I—in fact, both Mr. Bakers and I sat in the living room, in the dining room, excuse me, and talked, and he told me about his business and we discussed the pictures of my children that were there, and he was very impressed with——

Q. (Interposing): Anyway, you had this discussion with him. Did she make any attempt to go back downtown?

A. Yes. He wouldn't allow it. He told her he had brought her home because of the condition she was in, that he could have her cab, and he would call another cab, but that he would not go down town with her.

Q. At any time that morning, either before or after she went down town, did she commit any acts of prostitution in your house?

A. When I arrived home——

Mr. Guterson (Interposing): Objection.

By Mr. Kosher:

Q. Answer yes or no.                      A. No.

Q. Now, you heard her testify, did you not, that between two and three o'clock in the morning or two and four in the morning, or something like that, she committed some acts of prostitution. Is that true or false?                      A. It is false.

Q. She also testified that you and Mr. Berg were

(Testimony of Victoria Ruth Foughty Heller.)

[413] both present when these acts of prostitution were committed? Is that true or false?

A. It is false.

Q. Now, what did she do after these two gentlemen left the house? A. She went to bed.

Q. That would be Thursday morning—isn't that right? A. Yes.

Q. And do you recall what time you got up? What did you do then? A. I went to bed.

Q. Do you recall what time you got up Thursday morning?

A. Approximately six-thirty or a quarter to seven.

Q. You didn't get very much sleep, then?

A. No.

Q. What did you do the next day?

A. The first thing in the morning I talked to my sister-in-law, Mrs. Foughty, on the telephone, and she suggested to me I contact the Oldsmobile dealer. She had Mr. McCulloch call me. It was a friend she had known. He called me and made an appointment to pick me up right around noon and take me and show me the Oldsmobile.

Q. Did you leave your home, then, about twelve o'clock Thursday? [414] A. Yes.

Q. Tell the jury in your own words now what you did then in the afternoon, and just make it very brief, please. Just generally what you did?

A. He demonstrated the 88 Oldsmobile he had brought to me. I decided on an Oldsmobile. We went to my bank and withdrew the money for the

(Testimony of Victoria Ruth Foughty Heller.)

down payment on the car. We went back over to Kirkland where his dealership is, made all the necessary papers, had my credit approved, and in the meantime, after we were back in Kirkland, I had decided on the 98 Oldsmobile, and, therefore, he gave me this 88 demonstrator to use until he could get a delivery on the new 98.

I came back home about six or seven o'clock. Rose and Ted had very kindly fixed dinner, and everything was done when I got there. Due to the lack of sleep of the night before, I showered and went to bed immediately.

My children and Rose and Ted were watching television.

Q. Was she in fairly good shape at that time?

A. The best I had seen her in.

Q. Were she and Ted getting along pretty well at that time as far as you could see?

A. Yes. [415]

Q. Did they discuss getting married at that time? A. It was constantly discussed.

Q. Now, what time did you get up Friday?

A. Friday? Well, of course, I got up and got the children off to school. Friday morning the General Polk was coming back into port, and Ted had asked me if he could use the 88 to go down and meet the ship, as it came in with all of his friends on it. It came in at eight o'clock.

Q. Did you let him do that—you let him use it?

A. Oh, yes.

Q. Did you go down town at all that day?

(Testimony of Victoria Ruth Foughty Heller.)

A. Later in the afternoon.

Q. And what time did you go down town, Mrs. Heller?

A. Middle of the afternoon.

Q. In the middle of the afternoon?

A. Yes, middle of the afternoon.

Q. And who went downtown with you?

A. Rose.

Q. Rose and you both went down town, and where did you folks go?

A. We went to the Northern Lights.

Q. What is the Northern Lights?

A. It is a restaurant and cocktail lounge.

Q. Did you and she and Mr. Berg have something to [416] drink down there?

A. Yes. George Pearce had stopped out earlier in the afternoon and was there, and several different of his shipmates stopped in there.

Q. Now, did you all drink much down there at the Firelight Room?

A. We all drank too much.

Mr. Guterson: Is this the Firelight Room?

The Witness: No.

By Mr. Kosher:

Q. Northern Light? A. Northern Light.

Q. And then what did you do?

A. I had to be back at the house at 9:30 for delivery of the new 98 Oldsmobile.

Q. Did you go back home then?

A. Yes. Rose, Ted, George Pearce and myself all went back out to the house.

(Testimony of Victoria Ruth Foughty Heller.)

Q. What was Rose's condition at that time insofar as sobriety was concerned?

A. Intoxicated.

Q. Now, would you tell us what happened Friday evening?

A. In the meantime, George Pearce, who was very much inebriated, tried to persuade Rose to come with us. [417]

Q. And she wouldn't come?

A. Yes, just absolutely wouldn't come.

Q. Then did you bring the guests back to the house for the party?

A. Yes. It took us about two hours to get everybody together.

Q. Will you tell the jury why it was you had this party, so late in the evening?

A. Well, because of the particular people that we knew. Each time they are in port they are *not* different watches, and because of this time in docking—well, Bob McSharry didn't get off watch until twelve midnight.

Q. Can you tell us about what time this party started?

A. About two.

Q. About two in the morning?

A. Yes.

Q. And was it a drinking party?

A. Yes.

Q. And did some of the boys roll some dice there?

A. I believe they did. Yes, I am sure they did.

Q. What was Rose doing all this time?

A. Well, from the time we had gone down town around eleven-thirty, she had evidently been drink-



(Testimony of Victoria Ruth Foughty Heller.)

ing. When we came back to the house, George Pearce was up. [418]

They were drinking together, and Pat Gentile and Danny Bard, who were coming to the party, were there waiting for us. She was just drinking and she was just drunk when I returned home.

Q. What happened then that evening? Can you tell us very briefly what happened?

A. Well, everyone was having a very good time. George Pearce went back and lay down on the top of the bed in the guest room. Mr. Busby was a mate on the ship and hadn't had any sleep for some time, and went back and laid down in the same bed with him.

At a time after that, I would say one hour or so, Rose left that particular bedroom. She walked into the bathroom, walked out and went into the bathroom, directly across the hall. I walked in and she had this wallet in her hand. She had it opened and I looked at it. I asked whose it was and she said it was one of those fellows. I know at the time there were seven fifty dollar bills in the wallet.

Q. How did you know that, Mrs. Heller?

A. Because I counted it. I wanted to be able to check with him and know that the money was intact. I felt, however, it was, inasmuch as I had walked in so immediately.

Q. You counted the money then. Did you take the—— [419]

A. Yes, I put the money back in and watched



(Testimony of Victoria Ruth Foughty Heller.)  
her return it to the bedroom and lay it on the dresser.

Q. And then what happened?

A. Then a little time later, and not very much in time—and by this time, in fairness to Rose, she was very intoxicated. She went back into the bedroom, and when I saw her come out, I looked—I went in and looked in the wallet again, and there were only three fifty-dollar bills left. So I asked her to return them. She did return three of them. At this time—and the first word that I had said, it wasn't fair to Rose, I did call Ted. I felt it was time to talk to him about his shipmate.

Ted took out of his own pocket the \$50.00. He took \$50.00 in odd change and bought a fifty-dollar bill and returned it to Mr. Busby's wallet, and put it back in the bedroom.

Approximately one hour later Ted and I thought maybe we should check again, and there were three more gone.

Q. Three more fifty-dollar bills?

A. Three more fifty-dollar bills gone.

Q. Did you say anything to her about the three fifty-dollar bills?

A. Yes, we did.

Q. What, if anything, did she say about it?

A. She denied having them. She denied over a [420] great period of time that she had them. That she had them previously she admitted, but that she wouldn't do anything like that.

Teddy had made up the difference in the money, and that she wouldn't do anything like that. It

(Testimony of Victoria Ruth Foughty Heller.)

finally narrowed down to Rose calling me in the living room and I would say this, it went on for one or two and one half hours, and she told me we thought we were so clever, if she wanted to hide this money we never would find it, and then she spit three little balls out of her mouth, which were three fifty-dollar bills.

Q. What happened after that?

A. Ted immediately became busy washing these three fifty-dollar bills, namely, trying to get them replaced in Mr. Busby's wallet before he knew anything like this happened. Mr. Busby got up before we finished.

Q. Were there words between Mr. Berg and Rose at that time?

A. Yes. Mr. Berg felt and expressed himself quite plainly, that it was like stealing his own money. After all, he had replaced it the first time she kept the fifty dollars.

Q. Did you get into it?

A. I ordered her from my home. I did ask her to return the money before she left, and ordered her from my [421] home.

Q. Did she leave then?

A. No. She was trying to convince me she still didn't have this fifty dollars.

Q. Was there a fifty-dollar bill still missing?

A. Yes, from the first time Mr. Berg had made it up.

Q. And then what happened?

A. She was drinking a cup of coffee at the

(Testimony of Victoria Ruth Foughty Heller.)  
dining room table. Mr. Berg had gotten up at that time. Mr. McSharry, who was in my bedroom and who had gone to sleep, got up. They came out in the kitchen. We were all sitting in the kitchen with the exception of Rose. She just got up and left. She went out the patio door.

Q. Did you know where she had gone?

A. We didn't know where she had gone. We know—I felt that I had been rude, and that I could have done things a little nicer; but Mr. Berg thought she might have gone to a neighbor, and he did go to a neighbor's house and ask if she were there.

Q. Now, at any time did you and Mr. Berg abuse her while she was in your house in any way?

A. I wasn't very kind that last evening.

Q. You mean——

A. (Interposing): After the money.

Q. Now, did you ever accept any money from this woman for any purpose whatsoever? [422]

A. No.

Q. Did she ever give you as much as one penny in all the time you have known her? A. No.

Q. For any purpose? A. No.

Q. Did she ever commit any acts of prostitution that you know of while she was in Seattle?

A. No.

(Whereupon, there was a brief pause.)

Q. Now, Mrs. Heller, I will ask you specifically if at any time, on or about the 13th day of April, 1955, were you ever—whether or not you ever

(Testimony of Victoria Ruth Foughty Heller.)

persuaded or induced or enticed Rose Drucilla West to go from San Francisco, California, to the Western District of Washington?      A. No.

Q. Did you ever harbor any intent at any time that she should engage in prostitution any place?

A. No.

Q. Did you ever harbor the intent that she should practice prostitution in Seattle?

A. No.

Q. Did you ever cause her to go or be carried on a common carrier from San Francisco, California, to Seattle? [423]      A. No.

Q. Did you ever do anything at all to help her get from San Francisco to Seattle?

A. Nothing.

Q. Where are you living at the present time?

A. I am still in my home.

Q. And where are the children now?

A. After I was arrested a week later the children were taken by the county authorities. I now have them placed, with the Court's permission, in friends of mine's home.

Q. And you pay their board there?

A. Oh, yes.

Q. Have you ever gotten any help from anybody towards supporting these children?

A. I get help very frequently from my family.

Q. And did Mr. McSharry help you from time to time?      A. Yes, he did.

Q. During the time you were planning on getting married, did he give you money every month?

(Testimony of Victoria Ruth Foughty Heller.)

A. Yes.

Q. And do you and Mr. McSharry still plan on getting married if you can? You can answer that question.

A. I can only answer for myself—yes.

Q. I take it that all during this time you actually loved Mr. McSharry? [424]

Mr. Kosher: Do you wish to inquire, counsel? I am through.

Mr. Rousso: No, I haven't any questions of this witness.

#### Cross Examination

By Mr. Guterson:

Q. You stated at one time your occupation was that of a dental assistant? A. Yes.

Q. When was that?

A. In 1942 and 1943 and a part of 1944.

Q. And since 1944 have you been employed?

A. I was married until 1948. Since that time I have not been employed on a steady occupation.

Q. Have you been employed on a non-steady occupation?

A. Yes, I have done some selling. Through my marital break-up I have some rental properties, and, as I have said, my family have been very good to the children.

Q. What have you sold?

A. I sold oil stock and several years ago Avon Products.

Q. You were present in the court room this morning when Mr. McSharry was on the witness stand? A. Yes. [425]



(Testimony of Victoria Ruth Foughty Heller.)

Q. Did you know he testified that during the month of December of the year 1954 on occasions when he was at your present residence on Mercer Island he had various conversations with you in regard to prostitution? Do you recall that testimony by him? A. Yes, I recall it.

Q. Is it your testimony that what he said—did you, in fact, have a conversation with him of that nature in December, 1954? A. No.

Q. You never did? A. No.

Q. That is the man you still intend to marry?

A. It is very hard to answer yes or no.

Q. I understand; you were present this morning when Mr. McSharry was on the witness stand and testified in the month of January, 1955, when he was at your residence on one specific occasion when you were both in the bedroom, when you spoke on the telephone and said to the person on the other end that there were two girls in town and that you felt he should tell his boys about them and give them a try. Did that take place or not?

A. Not in that light, and I don't remember it.

Q. You don't remember? A. No. [426-7]

Q. It may have taken place?

A. Certainly not in the light it was reflected in.

Q. What light did it take place in, then? You tell me.

A. I believe quite certainly that it didn't happen.

Q. Was Mr. McSharry in your home in January, 1955?

A. For a matter of two hours.



(Testimony of Victoria Ruth Foughty Heller.)

Q. You met Mr. Berg, you say, through your association with Mr. McSharry? A. Yes.

Q. But there was never any romantic inclination between the two of you — you were just good friends? A. Just friends.

Q. And during the month of March Mr. Berg went to Los Banos? A. Yes.

Q. Were you aware of that? A. Yes.

Q. Did you know he was going beforehand?

A. Oh, yes.

Q. Had he ever been at your home before he made that trip? A. Yes.

Q. And when he returned, did he call you?

A. Well, he called me, and I was down town.

Q. You contacted him after his return?

A. Yes.

Q. Now, with regard to the trip that Mr. Berg made to Los Banos in March, 1955, you were present this afternoon when Mr. Breen testified to the effect that when Berg returned—this was your conversation to Mr. Breen, according to Mr. Breen—that when Berg returned, he told you that arrangements had been made and he had spoken with Rose West, and that she was coming to Seattle.

Did that conversation take place with Mr. Breen?

A. I had a conversation with Mr. Breen.

Q. Did you discuss what I have just enunciated?

A. No, no.

Q. You say you contacted Mr. Berg down town after he returned to Seattle from this trip?

A. Yes.

(Testimony of Victoria Ruth Foughty Heller.)

Q. And at that time the U. S. General Polk was at sea?      A. Yes.

Q. And he was without employment?

A. Yes.

Q. And as a friendly gesture you invited him to reside with you?      A. Yes.

Q. What is your telephone number at your home *on* ]429]

A. Adams 1569.

Q. And what was your telephone number in April of 1955, do you remember?

A. I am sorry; I don't remember the number.

Q. Adams 5680?

A. Adams—I guess I have forgotten, actually.

Q. At any rate, in May that phone was disconnected, and now you have a different phone?

A. Yes.

Q. Was Mr. Berg living at your home in the early part of April, 1955?

A. Whenever he—the only way I can relate dates is from when the Polk was in port.

Q. All right.

A. When he returned from his trip seeing his mother and Rose in Los Banos, he did stay at my house. It was a temporary arrangement first.

Q. And he remained on until the Polk came back in, April 15th?      A. Yes, he did.

Q. So that on the 3rd, 10th and 12th of April, 1955, he would have been residing in your home, is that correct, Mrs. Heller?

(Testimony of Victoria Ruth Foughty Heller.)

A. I am not sure about the 3rd. The other two dates, yes. [430]

Q. I will hand you what are exhibits in evidence as Plaintiff's Exhibits 5, 6 and 7, which are toll tickets of long-distance telephone calls originating at Adams 5680.

Were any phone calls made from your phone at Adams 5680 to the number Los Banos 2404 in April, 1955?

Mr. Kosher: I object to that upon the grounds of improper cross examination.

The Court: I think she denied making any telephone calls. This relates to the same matter.

Mr. Kosher: I mean with reference to the exhibits he handed her.

Mr. Guterson: I am just helping to try to refresh her memory.

The Court: Mr. Reporter, read the question.

(Whereupon, the preceding question was read by the reporter.)

A. I would have to have a calendar to verify the first one of the three.

Q. What about the other two—the 10th and the 12th?

A. Mr. Berg had asked me if he could make phone calls on my phone.

Q. Answer the question.

Mr. Kosher: Answer if you know; if you don't, just say so. [431]

A. I don't actually know that they were made.

(Testimony of Victoria Ruth Foughty Heller.)

By Mr. Guterson:

Q. Did you testify, Mrs. Heller, that you don't know at all of any telephone calls that were made from your home to Los Banos?           A. Yes.

Q. That is your testimony?           A. Yes.

Q. Go ahead.

A. Other than Ted telling me he was charging phone calls to my phone, and would pay me when I received the bill.

Q. He did tell you he was; did he tell you he was making them from your number?

A. Well, yes. At no particular time.

Q. Were you ever present when he called Los Banos?

A. I don't believe that I have been present.

Q. Did you ever talk to Miss West?

A. No.

Q. On a long-distance call from Seattle?

A. No.

Q. You were present this afternoon, were you not, Mrs. Heller, when Mr. Breen of the F.B.I. testified as a witness?           A. Yes.

Q. Do you recall the testimony of Mr. Breen to the [432] effect that when he spoke to you August 25, 1955, you told him you spoke over the telephone to Rose West in early April, and that you told Rose to come to Seattle.

Did you or did you not make that statement to Mr. Breen?

A. I did not make the statement as it stands, no.

Q. Do you want to explain it in any way?

(Testimony of Victoria Ruth Foughty Heller.)

Mr. Kosher: I object, if your Honor please. I think she answered the question. She said she didn't make the statement.

Mr. Guterson: All right.

By Mr. Guterson:

Q. You were present this morning, were you not, Mrs. Heller, when Mr. Gunn of the F.B.I. was on the witness stand? A. Yes.

Q. Do you recall the testimony of Mr. Gunn to the effect that when he spoke to you April 28, 1955, that you told him on that occasion that you did, in fact, speak with Miss West long distance from Seattle to Los Banos from your home in April, 1955.

Do you recall his testimony?

A. I recall his testimony.

Q. Now, did you or did you not speak long-distance with Miss West? [433]

A. I did not.

Q. Did you or did you not make that statement to Mr. Gunn?

A. I did not. Mr. Gunn's notes are rather hard to refresh anyone's memory on.

Q. Just answer the question.

A. No, I did not.

Q. Now, you say that the first time—now, you say that the first time that you spoke to Miss West was on her call to you from the airport when she arrived in Seattle?

A. That was the first time.

Q. That was early Wednesday morning, April 13, 1955? A. Yes.



(Testimony of Victoria Ruth Foughty Heller.)

Q. You had never heard her voice before?

A. Never.

Q. Did you know she was expected that morning?  
A. Not particularly that morning.

Q. Did you answer the phone when it rang?

A. Yes.

Q. Do you know how she knew what your telephone number was?  
A. Not at the time.

Q. And when you answered the phone, what was your conversation? [434]

A. I think I told her, "Welcome to Seattle," and apologized for the fact I had no transportation, and asked her if she would like to come out for breakfast, in a cab.

Q. Just a friendly chat?  
A. Yes.

Q. And you invited her to your home?

A. Yes.

Q. Did she come to your home?

A. Yes, she did.

Q. How soon after the conversation?

A. Oh, one hour.

Q. Did she arrive by taxicab?  
A. Yes.

Q. Mr. Berg was at your home at that time?

A. Yes.

Q. He had been staying there for a week, or some time?  
A. Yes.

Q. He had been living there both day and night, is that correct?  
A. Except for working.

Q. This was a time when the ship was away?

A. He had special assignments on this exception.

Q. You stated when Rose arrived at your house



(Testimony of Victoria Ruth Foughty Heller.)  
that she was intoxicated and had been drinking heavily? [435] A. Yes.

Q. And you criticized her because she was in that condition? Was that your testimony?

A. Yes.

Q. And you wished to look after her; you were interested in her welfare?

A. Interested in Ted's welfare.

Q. Yes; and you were just getting the children's breakfast, is that right?

A. Yes, just getting breakfast ready.

Q. Now, you were present this morning, were you not, when Mr. Gunn of the F.B.I. testified, Mrs. Heller? A. Yes.

Q. Do you recall his testimony to the effect that when you conversed with him on April 28, 1955, you told him that when Rose arrived she said something to you about having intercourse with a pilot, and about having received \$15.00, and that you reprimanded her and told her that was too cheap; and do you recall that testimony of Mr. Gunn?

A. I remember her statement, but not my words.

Q. Do you recall the testimony of Mr. Gunn?

A. Yes.

Q. Now, did you or did you not make that statement? A. I did not.

Q. Did you or did not you have that conversation [436] with Miss West?

A. Miss West did tell me that, and I told her I wanted no conversation whatsoever like that in my home where my children resided.

(Testimony of Victoria Ruth Foughty Heller.)

Q. But you say you never related this conversation to Mr. Gunn?

A. I may have told Mr. Gunn, yes, that that is what she said; but not my answer, no.

Q. You welcomed—

Mr. Kosher: May she have a drink of water, please?

The Court: Do you desire a drink of water?

The Witness: Please.

The Court: All right.

(Whereupon, there was a brief pause, during which time the bailiff handed the witness a glass of water.)

The Court: You can continue.

Mr. Guterson: Thank you.

By Mr. Guterson:

Q. At any rate, you welcomed her into your home, and told her she could come in and stay; is that correct?

A. At that time? I don't understand your question.

Q. Early in the morning, Mrs. Heller, of Wednesday, April 13, 1955, Miss West had just arrived at your home, and you welcomed her into your house, and told her that she [437] could stay?

A. I did not tell her she could stay at that time.

Q. What did you tell her with regard to where she might stay?

A. A little later, after the children were at school.

Q. Yes?

(Testimony of Victoria Ruth Foughty Heller.)

A. I asked Miss West if she would be more comfortable at my home for a few days until they made other living arrangements, that she was very welcome, as a friend of Ted's, in my home.

Q. Ted was staying there also at that time?

A. Yes.

Q. It is your testimony, Mrs. Heller, that you stayed at home that morning until about eleven-thirty a.m., is that correct?

A. Yes.

Q. Did you stay awake, or did you sleep?

A. I was awake.

Q. You were present this morning when Mr. Gunn of the F.B.I. testified?

A. Yes.

Q. Do you recall Mr. Gunn's testimony that when you and he conversed, April 28, 1955, you told him on the morning of Wednesday, April 13th, you were asleep until [438] one o'clock in the afternoon, and whatever Rose did was her own business?

A. I do not remember testifying to that.

Q. Did you or did you not make that statement?

A. I did not.

Q. Is it true, or not true?

A. It is not true.

Q. You were awake; was Rose awake or did Rose sleep?

A. Rose was going to shower and go to bed after I left. She was awake. She was awake, drinking.

Q. Now, you said you left the home then at about eleven-thirty in the morning to look for a new automobile?

A. Yes.

Q. You left with Mr. Berg?

A. Yes.

(Testimony of Victoria Ruth Foughty Heller.)

Q. And in the home was Rose? A. Yes.

Q. And no one else? A. And no one else.

Q. And the boys were in school?

A. The boys were in school.

Q. And during the course of your travels looking for a car, you stopped at the Firelight Room in the Moore Hotel? [439] A. Yes.

Q. And the gentleman who testified on your behalf earlier is the man who remembers that?

A. Yes.

Q. And you got home about nine o'clock in the evening, is that right? A. Yes.

Q. Had you been home at all between eleven-thirty in the morning and nine o'clock in the evening? A. I had not been home.

Q. Had Mr. Berg been with you all of that time?

A. Yes.

Q. Were your boys at home when you came home? A. Yes.

Q. Were they asleep?

A. As soon as I got home, they went to bed.

Q. Rose had been taking care of them during the day? A. Yes.

(Whereupon, there was a brief pause.)

Q. Now, with regard to Rose coming to Seattle, is it your testimony that you were not aware of any money being sent—any \$60.00 being sent—from Seattle for that purpose?

A. Not before she arrived. [440]

Q. Did you speak about that matter with Mr. Breen when you talked to him on August 25, 1955?

(Testimony of Victoria Ruth Foughty Heller.)

A. I don't remember.

Q. You were present when Mr. Breen testified this afternoon, were you not, Mrs. Heller?

A. Yes, I was present.

Q. You recall he testified when he conversed with you August 25th that you told him that the \$60.00 had been borrowed by Mr. Berg from a friend of yours, Mr. Gentile, and Mr. Berg paid him back the next day; and you took him down to the Western Union office?

A. In the interval I heard it.

Q. Did you have that conversation with Mr. Breen?      A. Yes.

Q. That conversation you did have?

A. Yes.

Q. Mr. Breen was telling the truth on that occasion?      A. Yes.

Q. Now, this first night, Wednesday night, at nine o'clock when you got home and the boys went to bed, is that the night Rose left and you said you don't know where she did go?

A. Yes. Monday—I mean Wednesday.

Q. Wednesday?      A. Wednesday. [441]

Q. And you and Mr. Berg remained at home?

A. Yes.

Q. And you say about two o'clock in the morning she came back with two gentlemen named Baker?      A. Yes.

Q. You say you did know these two Mr. Bakers?

A. No.

Q. You did not know them?      A. No.



(Testimony of Victoria Ruth Foughty Heller.)

Q. They were strangers to you? A. Yes.

Q. That is the first time you had ever seen them?

A. Yes.

Q. When Rose returned with the two Mr. Bakers, was there anyone else in the house besides Rose, the two Mr. Bakers, Mr. Berg and yourself?

A. There was Bob Marshall, Cab Driver 39, whom I used quite frequently before buying the car, and this gentleman friend of his that he brought with him. There was Pat Gentile and Daniel Bard.

Q. It was about two o'clock in the morning?

A. Very close in there.

Q. You were present this morning when Mr. Gunn of the F.B.I. testified, were you not, Mrs. Heller? A. Yes. [442]

Q. Do you recall he testified that you and he conversed on April 28, 1955, and he said that during the course of that conversation you told him that this same Baker is a man who lives at the Stewart Hotel, and carries \$5,000 on his person at all times, and that also there was a Walter or Elmer Baker, a friend of Elmer's son, who was being set up for a dice game.

Do you recall the testimony?

A. I recall the testimony.

Q. Did you or did you not make the statement to Mr. Gunn?

A. That I had heard from Mr. Baker in my home that evening.

Q. Did you tell that to him when you talked to him on April 28th?



(Testimony of Victoria Ruth Foughty Heller.)

A. I believe I told him Mr. Baker told me about the money he carried.

Q. Was there any dice game that night?

A. Not with either Mr. Bakers.

Q. Some of the others? A. Yes.

The Court: Mr. Volinn, do you wish to be excused?

Mr. Volinn: Yes, I would like to be.

The Court: I understand you have another [443] appointment. Is there any objection?

Mr. Volinn: May I inquire how much longer the cross examination will be?

The Court: Do you have any objection to interrupting cross examination at this time? Are you about through, or do you have any objection to interrupting?

Mr. Guterson: I would just as soon interrupt. I think I have quite a bit more to complete.

The Court: So that you don't anticipate finishing in a few minutes?

Mr. Guterson: Not within a few minutes.

The Court: All right. We will recess then. [444]

\* \* \* \* \*

VICTORIA RUTH FOUGHTY HELLER  
upon being recalled as a witness for and on behalf  
of the defendants, and having been previously duly  
sworn, testified as follows:

Cross Examination—(Continued)

By Mr. Guterson:

Q. Mrs. Heller, was it your testimony that

(Testimony of Victoria Ruth Foughty Heller.)

Thursday night, April 14th, was the night you came home after car hunting and went to bed at an early hour?      A. Yes.

Q. And you say you arose on Friday and both you and the defendant Mr. Berg and Rose West all went to town—is that correct?

A. In the afternoon, late afternoon.

Q. You didn't go until late afternoon; were you all three at your home during the morning and early afternoon hours?      A. No.

Q. Where were you during the day of Friday?

A. I was home.

Q. Was Miss West at home?      A. Yes.

Q. Was Mr. Berg at home?      A. No. [451]

Q. That was the day you permitted him to use a car to go down and get his friends at his ship; the ship docked at eight o'clock?      A. Yes.

Q. And then later on in the afternoon you and Mr. Berg and Miss West all went down town—was that your testimony?      A. Yes.

Q. Is that what you three did?

A. Eventually, yes.

Q. About what time did you leave?

A. Rose and I went down, it would have been, I would consider early evening.

Q. And Mr. Berg?

A. Mr. Berg and Mr. Pearce were already down town.

Q. And you met and went to a place called the Northern Lights, is that correct?      A. Yes.

(Testimony of Victoria Ruth Foughty Heller.)

Q. Is it your testimony you had a little bit too much to drink; is that your testimony?

A. No.

Q. Were you drinking down there?

A. Yes.

Q. And who was at the home with your children during this time? [452]

A. My sister-in-law.

Q. And what time did you come back home?

A. At nine-thirty.

Q. And at eleven-thirty you went back to town, is that right, with Mr. Berg? A. Yes.

Q. And you left and Miss West and Mr. Pearce — you left Miss West and Mr. Pearce at your residence? A. Rose insisted on staying home.

Q. And she and Mr. Pearce both stayed at your home? A. Yes.

Q. And before you had left down town at nine-thirty to come home, did Mr. Pearce give you some money? A. Yes.

Q. How much money did he give you?

A. He — actually, he offered me whatever I wanted, and he handed me this \$150 or \$200, I believe it was a figure in between, telling me that this was on a Friday night, and there was a difference in the down payment of the two cars which I was to take care of that evening.

Q. How much money did he give you?

A. Between \$150 and \$200; right in there.

Q. That was down at the Northern Lights, was it, before he came to the home? [453]

(Testimony of Victoria Ruth Foughty Heller.)

A. Yes.

Q. And after you and Mr. Berg left at eleven-thirty and went back downtown, did you subsequently meet Mr. McSharry? A. Yes.

Q. And you went to the Northern Lights and to the Sportsman and to the Stork Club?

A. No.

Q. Where did you go?

A. Because of our trying to coax Rose to go down town with us, and not to stay at home, we were too late to pick Mr. McSharry up at the dock, and we met him at the Sportsman's Club, I would say, about twelve-twenty.

Q. And then where did you go?

A. To the Stork Club.

Q. To the Stork Club? A. Yes.

Q. You were present yesterday when Mr. McSharry was a witness in this case? A. Yes.

Q. Do you recall Mr. McSharry's testimony while you and he and the others were at the Stork Club, that he asked you if you would get a date for Mr. Busby; do you recall that testimony by Mr. McSharry? A. Yes. [454]

Q. Did you and he in fact have that conversation?

A. I couldn't remember whether we had it at that occasion or not.

Q. You might have?

A. He has asked me a great many times to get girl friends.

Q. Just answer the question.

(Testimony of Victoria Ruth Foughty Heller.)

A. I may or I may not have.

Q. I see; and then Mr. McSharry testified, as you will recall, yesterday, that after you returned from the telephone you told him it had all been taken care of; did that conversation take place between you and Mr. McSharry? A. No.

Q. That never took place? A. No.

Q. You recall yesterday when Mr. Breen of the F.B.I. was a witness, do you not, Mrs. Heller?

A. Yes.

Q. Do you recall that Mr. Breen testified that when you and he conversed in the F.B.I. office on the 25th of August, 1955, you told him you had called a girl by the name of Bonnie from the Stork Club; do you recall that testimony of Mr. Breen?

A. I never stated I called from the Stork Club.

Q. Do you recall that testimony? [455]

A. Yes.

Q. Did you or did you not call a girl named Bonnie from the Stork Club?

A. I don't know where I called her from.

Q. Did you call her in the early morning hours of Saturday, April 16, 1955? A. Yes, I did.

Q. Do you further recall when Mr. Breen of the F.B.I. was a witness yesterday afternoon he testified that when you and he conversed, August 25, 1955, you told him when you talked to this girl named Bonnie in the early morning hours of April 16, 1955, that you told her to come out to your home, that you had a \$25.00 date for her; do you recall that testimony of Mr. Breen's?



(Testimony of Victoria Ruth Foughty Heller.)

A. I recall his testimony, yes.

Q. Did you or did you not make those statements to him in his office?

A. Not in that manner, no.

Q. Did you or did you not call Bonnie and have that conversation with her? A. I did not.

Q. What did you tell Mr. Breen in his office?

A. What happened.

Q. Did you or did you not tell Mr. Breen that you called a girl named Bonnie and told her you had a \$25.00 [456] date for her at your home?

A. Not in that manner, I did not.

Q. In what manner did you tell her?

A. I asked her and invited her out to a party.

Q. Is that what you told Mr. Breen?

A. Yes.

Q. And then what Mr. Breen testified you told him, that you called her and told her you had a \$25.00 date—Mr. Breen was not telling the truth?

A. I wouldn't for a minute attempt to say Mr. Breen was not telling the truth.

Q. Then explain it to me.

A. I am saying over a five hour conversation which I had with Mr. Breen certain little points could very easily be confused.

Q. Is this one of them?

A. Yes, this is one of them.

Q. You are confused, not Mr. Breen?

Mr. Kosher: Now, just a minute.

The Court: Just a minute. Did you make a statement, or did you ask a question?

(Testimony of Victoria Ruth Foughty Heller.)

A. I may or I may not have.

Q. I see; and then Mr. McSharry testified, as you will recall, yesterday, that after you returned from the telephone you told him it had all been taken care of; did that conversation take place between you and Mr. McSharry? A. No.

Q. That never took place? A. No.

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A. Yes.

Q. Do you recall that Mr. Breen testified that when you and he conversed in the F.B.I. office on the 25th of August, 1955, you told him you had called a girl by the name of Bonnie from the Stork Club; do you recall that testimony of Mr. Breen?

A. I never stated I called from the Stork Club.

Q. Do you recall that testimony? [455]

A. Yes.

Q. Did you or did you not call a girl named Bonnie from the Stork Club?

A. I don't know where I called her from.

Q. Did you call her in the early morning hours of Saturday, April 16, 1955? A. Yes, I did.

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(Testimony of Victoria Ruth Foughty Heller.)

A. I recall his testimony, yes.

Q. Did you or did you not make those statements to him in his office?

A. Not in that manner, no.

Q. Did you or did you not call Bonnie and have that conversation with her? A. I did not.

Q. What did you tell Mr. Breen in his office?

A. What happened.

Q. Did you or did you not tell Mr. Breen that you called a girl named Bonnie and told her you had a \$25.00 [456] date for her at your home?

A. Not in that manner, I did not.

Q. In what manner did you tell her?

A. I asked her and invited her out to a party.

Q. Is that what you told Mr. Breen?

A. Yes.

Q. And then what Mr. Breen testified you told him, that you called her and told her you had a \$25.00 date—Mr. Breen was not telling the truth?

A. I wouldn't for a minute attempt to say Mr. Breen was not telling the truth.

Q. Then explain it to me.

A. I am saying over a five hour conversation which I had with Mr. Breen certain little points could very easily be confused.

Q. Is this one of them?

A. Yes, this is one of them.

Q. You are confused, not Mr. Breen?

Mr. Kosher: Now, just a minute.

The Court: Just a minute. Did you make a statement, or did you ask a question?

(Testimony of Victoria Ruth Foughty Heller.)

By Mr. Guterson:

Q. (Continuing): Are you confused, or is Mr. Breen?

A. Mr. Breen is confused as to what I actually said to him. [457]

Q. Thank you. After you left the Stork Club you and Mr. McSharry and Mr. Berg and Mr. Busby, who had joined you, all went out to your home; is that correct? A. Yes.

Q. You arrived there between three or four in the morning, is that right?

A. Between two and three-thirty, I would say.

Q. You recall yesterday again when Mr. McSharry was a witness in this case, Mrs. Heller?

A. Yes.

Q. You recall that he testified that he went to bed about five in the morning, and that just before he dozed off you came into his room where he was sleeping in your home and told him Bonnie wouldn't stay unless given \$25.00; do you recall that testimony of Mr. McSharry's?

A. I do not recall his stating the time that he went to bed. I don't believe he mentioned the time that he might have gone.

Q. Do you recall when Mr. McSharry was on the witness stand he said some time in the early morning hours he went to bed at your home?

A. Yes.

Q. And that just before he dozed off you came into his room and told him Bonnie wouldn't stay

(Testimony of Victoria Ruth Foughty Heller.)  
unless given \$25.00; do you recall that testimony of Mr. McSharry? [458]

A. I recall his words, yes.

Q. Now, did that conversation between you and Mr. McSharry take place? A. No.

Q. And you recall further that Mr. McSharry testified he told you that you should take a fifty-dollar bill out of his pants, which were hanging up in the room; do you recall the testimony?

A. He asked me to take it out and pay her cab fare out to my house, that he thought that was the right thing to do.

Q. Do you recall his testimony that he told you to take a fifty-dollar bill out of his pants, Mrs. Heller? A. Yes.

Q. Did that conversation take place?

A. You mean, taking—for me to take the fifty-dollar bill?

Q. Yes. A. Yes, to pay her cab fare.

Q. Not to pay her to stay? A. No.

Q. Do you recall yesterday that when your neighbor, Mrs. Margaret Keating, was a witness in this case? A. Yes.

Q. Do you recall Mrs. Keating's testimony with [459] regard to the period from the first of November of 1954 until mid-April of 1955 and her testimony that within that period that it was almost every night there was considerable traffic at all hours of the night at your dwelling; do you recall that testimony of Mrs. Keating?



(Testimony of Victoria Ruth Foughty Heller.)

Mr. Kosher: Just a moment. I object on the grounds it is improper cross examination.

The Court: I don't think proper foundation has been laid, has it? For this question?

By Mr. Guterson:

Q. (Continuing): Were you present yesterday in the court room when Mrs. Keating was a witness in this cause, Mrs. Heller? A. Yes.

Q. Do you know Mrs. Keating? A. Yes.

Q. She is your neighbor? A. Yes.

Q. She lives next door to where you live on Mercer Island? A. Yes.

Q. You recognized her when she was a witness? A. Yes.

Q. Do you recall that during the course of her testimony she testified that you moved into the neighborhood [460] about the first of November of 1954? A. Yes.

Q. Is that about the time that you did move in there? A. Yes.

Q. You further recall that she testified that during the period from the time you moved in, in early November, until mid-April, 1955, that she was conscious—I believe was the word she used—of considerable traffic at your home most every night?

Mr. Kosher: I object to that question on the ground it is improper cross examination.

The Court: Objection sustained.

By Mr. Guterson:

Q. (Continuing): Do you recall when Mrs. Keating was a witness on the witness stand yester-

(Testimony of Victoria Ruth Foughty Heller.)

day, Mrs. Heller, and she testified you came to her home in May of 1955 one evening—do you recall her testimony to that effect?       A. Yes.

Q. Did you in fact visit her at her home?

A. Either in the latter part of April, or the first part of May.

Q. Do you recall Mrs. Keating testified that you asked her whether or not Miss West had come to her home on Saturday morning, April 16th? [461]

A. I did not ask her that in her home.

Mr. Kosher: Just a minute. I object to that on the grounds it is improper cross examination.

The Court: I will hear further from you why.

Mr. Kosher: Your Honor, I asked her nothing about that on direct examination.

Mr. Guterson: Your Honor,—

The Court (Interposing): That isn't the question. I will overrule the objection on that ground.

It seems to me, however, you should put some questions to this witness as to further matters before you start impeaching.

Is that what you are attempting to do or not?

Mr. Guterson: No.

The Court: Ask her the question first. What are you trying to bring out?

Mr. Guterson: I am trying to bring out her conversation with Mrs. Keating.

The Court: Well, is that an issue—the conversation?

Mr. Guterson: Well, I think it is what Mrs. Keating testified they talked about.

(Testimony of Victoria Ruth Foughty Heller.)

Q. Did you or did you not tell Mrs. Keating that you knew these things about Rose?

A. I didn't know then.

Q. Did you or did you not tell Mrs. Keating?

A. No, I did not.

Q. Thank you. A. Not all of them.

Q. Do you want to explain your answer in any way?

A. Yes. Mrs. Keating had spent some time with Rose and part of these things that were said were things that Rose had told her herself.

Q. You didn't tell her?

A. I didn't know them to tell.

Q. Now, in the early morning of Saturday, April 16, 1955, did a girl named Bonnie come to your home? A. At what hour?

Q. During the early morning hours of Saturday, [465] April 16, 1955? A. Yes.

Q. And was that the girl you had called on the telephone, Mrs. Heller? A. Invited, yes.

Q. You had invited her to your home?

A. (Witness nods in the affirmative.)

Q. And Mr. Pearce was there at your home?

A. Yes.

Q. And Mr. Busby was there? A. Yes.

A. Mr. Berg was there? A. Yes.

Q. Mr. McSharry was there? A. Yes.

Q. Rose West was there? A. Yes.

Q. And all these people stayed there throughout the whole night and slept there?

A. Only the three people from the ship slept.

(Testimony of Victoria Ruth Foughty Heller.)

Q. What was that?

A. Mr. McSharry, Mr. Pearce and Mr. Busby laid on top of the bed in the guest room.

Mr. Guterson: I believe that is all. [466]

### Redirect Examination

By Mr. Kosher:

Q. Now, Mrs. Heller, with reference to the statements that you were alleged to have made to Mr. Gunn about this girl Bonnie, will you state whether or not he told you that there was a girl by the name of Bonnie who had been arrested in the Olympic Hotel for practicing prostitution?

A. Mr. Gunn?

Q. Yes.           A. No.

Q. Did anybody tell you that?           A. No.

Q. Now, did you ever tell anybody that this girl, Bonnie, had been arrested in the Olympic Hotel for practicing prostitution; do you under my question?

A. No, I am not really understanding it.

Q. Do you recall that when Mr. Gunn was upon the witness stand he said that when you were talking to him that you told him that you knew that Bonnie was a prostitute, and that she had practiced prostitution in the Olympic Hotel and had been arrested for that?           A. No, I did not.

Q. Did he tell you that there was such a girl who had been arrested; a girl by the name of Bonnie?

A. Well, it wouldn't refer to the same person, so

(Testimony of Victoria Ruth Foughty Heller.)

By Mr. Kosher:

Q. (Continuing): Did somebody pay the cab fare for this girl Bonnie?

A. Mr. McSharry offered and wanted to pay it.

Q. Now, from time to time did you have to pay the baby sitter for this girl?

A. Many times if the woman who was going to go out with us as a foursome, if she had children, usually the gentleman would ask if he might pay the baby sitter, yes, sir. [470]

Q. Now, did you ever know any of these girls to engage in the practice of prostitution?

A. No.

Mr. Kosher: I think that that is all for the moment.

Mr. Rousso: I have no questions.

Mr. Guterson: Nothing further.

The Court: You may step down.

(Witness excused.) [471]

\* \* \* \* \*

## CEDRIC THEODORE BERG

upon being called as a witness for and on behalf of the defendants, and upon being first duly sworn, testified as follows:

### Direct Examination

By Mr. Rousso:

Q. What is your name?

A. Cedric Theodore Berg.

Q. Mr. Berg, are you a pimp?                      A. No.



(Testimony of Cedric Theodore Berg.)

Q. Have you ever been a pimp? A. No.

Q. Or a procurer of women for the purposes of prostitution? A. No.

Q. What is your occupation?

A. I am a seaman.

Q. How long have you been a seaman?

A. Since 1943.

Q. When did you first meet Rose Berg Dill, approximately? A. In 1947, I think.

Q. Have you associated with her ever since that time? [476] A. Yes.

Q. When did you find out Mrs. Dill practiced prostitution?

A. I knew that the first time I met her.

Q. Would you describe the circumstances of that meeting?

A. Yes. I met her in Firebaugh.

Q. And what is Firebaugh?

A. It is a little town in California.

Q. And where was she when you met her?

A. She was working there.

Q. Working as a prostitute? A. Yes.

Q. Do you know of your own knowledge when Mrs. Dill stopped the practice of prostitution?

A. Yes. I think it was 1951 or 1952. It was during the time while I was in the Army.

Q. You were in the Army at that time?

A. Yes.

Q. Was it around the time when she had her child?

(Testimony of Cedric Theodore Berg.)

A. I think she had the child some time after that.

Q. When did you first consider marrying Mrs. Dill?

A. We talked about it then in 1952, when I was home on leave.

Q. In 1952? [477]                      A. Yes.

Q. You were in the Army at that time?

A. Yes.

Q. Did you make a trip to Los Banos some time in August, 1954?                      A. Yes.

Q. What was the purpose of that trip?

A. To get my car and my clothes.

Q. Do you have a family down there?

A. Yes.

Q. You mean by that your mother resides there?

A. Yes.

Q. Did you see Rose West Dill on that trip?

A. Yes, I did.

Q. During that trip, and I mean the trip that took place August of 1954, did you at any time suggest to Rose West Dill that she should come to Seattle and practice prostitution?                      A. No.

Q. Did she during that trip at any time offer to come to Seattle to practice prostitution?

A. No.

Q. Did you discuss the possibility of marriage with her on that trip?                      A. Yes. [478]

Q. Did you discuss the possibility of making a home in Seattle on that trip?                      A. Yes.

Q. When did you first meet Vicky Heller?

(Testimony of Cedric Theodore Berg.)

A. Some time around the first of the year.

Q. The first of this year? A. Yes.

Q. Could you describe the circumstances of that meeting?

A. One of the fellows off the ship was going with her at the time, and most of us come out in a couple of places on Third Avenue, and they come in there at the time, or I come in there, whichever way it come about, and I met her there.

Q. You met her at one of the cocktail lounges on Third Avenue? A. Yes.

Q. Was she going with your shipmate, Mc-Sharry, at that time? A. Yes.

Q. Now, I am speaking in regard to the period of time before your trip to Los Banos, in March of this year—in other words, from the time you first met Vicky Heller until the time you took your trip to Los Banos in March, 1955—did [479] you ever discuss prostitution with Vicky Heller?

A. No.

Q. Prior to making your trip to Los Banos in March, 1955, did you ever mention Rose Berg's name to Vicky Heller?

Mr. Guterson: Rose West.

Mr. Rousso: Excuse me. Rose West Dill's name?

A. Yes.

By Mr. Rousso:

Q. In what connection did you mention her name; what were the circumstances?

A. Well, I don't know. It was mentioned several times during a conversation when we were out and

(Testimony of Cedric Theodore Berg.)

people talking together, and I mentioned that I might get married, and it all come up in the conversation.

Q. Did you mention you might get married to Rose West? A. Yes.

Q. You mentioned that to Vicky Heller?

A. Yes.

Q. During the period of time immediately preceding this March, 1955, trip to Los Banos, did you ever suggest to Mrs. Heller that she and you should go into the prostitution business?

A. No. [480]

Q. Did she ever make such a suggestion to you?

A. No.

Q. Did you make a trip to Los Banos in March of this year? A. Yes, I did.

Q. What reason did you have for going down there?

A. Well, my mother was contemplating undergoing an operation for gall bladder, and that is why I went, and to see Rose West.

Q. And you saw Rose during that trip?

A. Yes, I did.

Q. I would like to call your attention to the evening of March 19th of this year, which I believe to be a Saturday night. On that evening did you and Rose West go to a night club in Los Banos?

A. Yes.

Q. What was the name of that club?

A. The 152 Club.

Q. Now, were you people alone during the

(Testimony of Cedric Theodore Berg.)

course of that entire evening, or were there other people with you?

A. There were several others.

Q. Do you remember the names of any of them?

A. Yes; Bill Reno was one.

Q. What was that name? [481]

A. Billy Reno. He was the bartender in the 152 Club.

Q. He joined your party? A. Yes, he did.

Q. Do you remember the names of any other people that were present?

A. Yes, Lonnie Chappel, which was my ex-wife.

Q. Your ex-wife? A. Yes.

Q. Now, in the presence of those people did you and Rose West have any conversation in regard to marriage? A. Yes.

Q. Do you recall any part of Rose West's conversation at that time?

A. Yes, she told them she was planning to come up to Seattle, and that we were going to get married.

Q. Now, during this second trip, that is, the trip in March, 1955, did you ever suggest that Rose West should come to Seattle to practice prostitution? A. No.

Q. Did you ever state to Rose West during this trip that you would provide her with money for the purpose of coming to Seattle to practice prostitution? A. No.

Q. Did you ever state to Rose West during this



(Testimony of Cedric Theodore Berg.)

trip [482] that you would provide a place for her to practice prostitution in Seattle?      A. No.

Q. Did you in any way attempt to induce or entice Rose West to come to Seattle to practice prostitution while you were in Los Banos?

A. No.

Q. When did you get back to Seattle from Los Banos—approximately?

A. It was the last Tuesday in March; about the 28th or 29th. I am not sure about which date it was.

Q. When did you go and live at the Heller residence?

A. About the 1st of March; it was on a Friday.

Q. What were the circumstances of your going out there to live; why did you go out there to live?

A. Well, on the evening I was invited to stay out there I got off the ship at five o'clock, and I stopped in the Sportsman; and Mrs. Heller and Mr. Bostock and Gerry Scheurman came in there, and I was *taking* to a friend about moving out of the Moore Hotel on account of the rent being too high. And they came in, and we sat down and had a drink, and we got to talking, and it came up I was going to move because I was paying too much rent at the Moore Hotel, and Mrs. Heller invited me to stay out there until the ship came back in. [483]

Q. You came back to Seattle on March 28th? Did you start working at that time?

A. The next morning.

Q. Where?

(Testimony of Cedric Theodore Berg.)

A. I was working relief on one of the ships here in port.

Q. On an M.S.T.S. ship here in town?

A. Yes.

Q. Now, had you previously sailed on the General Polk?      A. Yes.

Q. And the General Polk—was that out at sea at this time?      A. Yes, it was.

Q. What was the reason for your not making the last trip; the trip, in other words, that the General Polk was then on?

A. I got off on account of my mother being sick, and I wanted to go home and be sure that everything was all right.

Q. You went to live out at the Heller residence then right around the first of April of this year?

A. Yes.

Q. Now, from that time—from the first of April until the time that Rose West Dill arrived in [484] Seattle—that would be about the 13th of April—during that period did you witness any acts of prostitution at the Heller residence?      A. No.

Q. During that period of time, did you ever state to Mrs. Heller that Rose Berg—excuse me—Rose West Dill—might be coming up to Seattle?

A. Yes.

Q. Now, did you state why she might be coming up to Seattle?      A. Yes.

Q. And why—what was the reason?

A. We were going to get married.

Q. Now, commencing around the 7th of April

(Testimony of Cedric Theodore Berg.)

of this year, did you have occasion to make some telephone calls to Los Banos, California?

A. Yes.

Q. Did you make those calls to Rose West?

A. Yes, I did.

Q. Now, what was the purpose of those calls?

A. Well, I told her after I got back up here that I would call her as soon as I could find a place to live.

Q. Now, in your first call, did you tell her that you had found a place or were looking for a place?

A. I told her I was looking for a place. [485]

Q. How long after the first call did you make your second telephone call?

A. One or two days later; maybe three.

Q. What was the reason for the second telephone call?

A. Well, she said she was coming up, and she didn't show up, so I called again.

Q. Now, did you make any other calls?

A. Yes, I made four or five calls, altogether.

Q. And those subsequent calls, approximately, as well as you can remember now, what was the topic of your conversation?

A. Oh, I don't remember exactly what was said.

Q. Did you, during the course of any of those calls, suggest to Rose West that she should come up to Seattle to practice prostitution? A. No.

Q. Did you, during the course of any of those calls, state to Rose West you would furnish money

(Testimony of Cedric Theodore Berg.)

to her to come up to Seattle to practice prostitution?      A. No.

Q. Did you ever send a money order to Rose West?      A. Yes.

Q. Was that for \$60.00?

A. Yes, it was. [486]

Q. Was that sent on approximately April 7th of this year?

A. No, it was sent April 6th.

Q. Was that a Western Union money order?

A. Yes, it was.

Q. Where did you get the money?

A. I borrowed it.

Q. Did you pay back the money?

A. Yes, I did.

Q. That you borrowed?      A. Yes, I did.

Q. When did you pay that money back?

A. I borrowed it on Wednesday, and I paid it back on Friday.

Q. Where did you get the money on Friday?

A. I had some checks coming from M.S.T.S.

Q. You used that money to pay back the loan you received on Wednesday?      A. Yes, I did.

Q. Now, why did you send that money to Rose West Dill?

A. Well, when I first called her, she stated that—I asked her if she needed any money, and she stated she didn't need any, that she had enough to come up on; and then on the second or third time I called her, she said she [487] said she wanted to pay some phone bills, and pay the woman who

(Testimony of Cedric Theodore Berg.)

was taking care of her child, and had to pay some rent before she left.

Q. Did she state during the telephone conversation that she wanted to use the money to provide herself with transportation to Seattle?

A. No, she didn't.

Q. Was it your intention in providing the money for Rose West that she use the money to come to Seattle?

A. Well, she could use the money for anything she wanted, as far as that was concerned.

Q. It was your thought, however, that the money was to be used to pay her fare?

Mr. Guterson: Your Honor, I object. He can ask what was said.

The Court: Objection sustained.

The question and answer will be stricken and the jury will disregard it.

By Mr. Rousso:

Q. I call your attention to the morning of April 13th of this year. Did you receive a phone call?

A. Yes.

Q. And that was from Rose West?

A. Yes, it was.

Q. Where was she calling from? [488]

A. From the airport, I guess.

Q. And what did you tell Miss West?

A. I told her we didn't have a car, and that she would have to come out in a cab.

Q. Did you give her the address on Mercer Island?

A. Yes, I did.



(Testimony of Cedric Theodore Berg.)

Q. She arrived out there in a cab?

A. Yes.

Q. What was her condition when she reached the house?      A. Well, she was pretty drunk.

Q. Now, she arrived there at approximately what time in the morning?

A. Oh, I would say around—between six and eight, some time.

Q. You were awake at that time?

A. Yes, I was.

Q. Were the Heller children in the house at that time?      A. Yes, they were.

Q. Did they go to school that morning?

A. Yes, they did.

Q. At about what time was that?

A. About 7:30, I guess.

Q. And you were still in the house at that time?

A. Yes.

Q. Did you leave the Heller house that day?

A. Yes.

Q. At approximately what time of the day was that?      A. Some time before noon.

Q. Some time before noon?      A. Yes.

Q. Did you observe any acts of prostitution in the Heller residence between the time of Rose West's arrival and the time you left the house that day?      A. Absolutely not.

Q. Were you in a position to know whether any acts of prostitution took place during that period?

Mr. Guterson: I will object, your Honor, to the form of the question. He can ask him every-

(Testimony of Cedric Theodore Berg.)

thing he did, and let the jury decide what position he was in.

The Court: Objection overruled.

A. No, there were no acts of prostitution.

The Court: That wasn't the question.

Mr. Rousso: Would you read the question, please?

The Court: Mr. Reporter, read the question.

(Whereupon, the preceding question was read by the reporter.)

A. (Continuing): Yes, I was.

By Mr. Rousso: [490]

Q. And did any acts take place? A. No.

Q. Do you recall approximately what time you got home that night. By "home," I mean back to the Heller residence?

A. About nine o'clock.

Q. Did you remain home the remainder of the evening?

A. I don't know whether I did or not.

Q. Did you do any drinking that evening?

A. Yes, I did.

Q. Were you joined in that drinking by Rose West? A. Yes.

Q. Now, from the time you got home that night until the next morning when you awoke, to your knowledge were there any acts of prostitution performed in the Heller house? A. No.

Q. Then on Thursday morning, did the Heller children go to school? A. Yes.

Q. What time did you leave the house that morning? A. I don't remember.

(Testimony of Cedric Theodore Berg.)

Q. Approximately—do you have some idea? Was it before or after noon?

A. Possibly before noon. It may have been in the afternoon. I am not sure. [491]

Q. From the time you got up that morning, until the time you left the house, to your knowledge were there any acts of prostitution performed in that house?

A. No, I was the only one there besides Mrs. Heller and Rose West.

Q. Now, on that Wednesday, the date of her arrival, or on that Thursday prior to the time you left for downtown, did Rose West ever give you any money? A. Never.

Q. Did she at any time ever give you any money? A. No.

Q. Now, what time did you get home Thursday night, approximately?

A. I don't remember what time it was.

Q. Well, was it before six in the evening, or after six in the evening?

A. I don't even remember that.

Q. Did you remain home Thursday evening?

A. Yes, I think so.

Q. Now, from the time you got home Thursday evening until the time you went to bed that night, or early Friday, did you observe any acts of prostitution in that house? A. No.

Q. To your knowledge were there any acts of [492] prostitution performed in that time?

A. No.

(Testimony of Cedric Theodore Berg.)

Q. Now, what time did you get up Friday morning?

A. I got up early Friday morning — around seven or eight o'clock.

Q. What time did you leave the house that morning?

A. I left there approximately around 8:30.

Q. Now, between the time you arose at approximately seven, and the time you left the house, at approximately eight-thirty, to your knowledge were there any acts of prostitution performed in that house? A. No.

Q. Where did you go when you left the house that morning? A. Down to Pier 39.

Q. What was your purpose in going to Pier 39?

A. I went down to the pier to meet the ship. It was docked, and I had clothes on the ship, and some of the fellows owed me money, and I had a lot of friends there.

Q. Do you recall where you went when you left the ship? A. Yes. I went to the Sportsman.

Q. Were you with anybody when you went to the Sportsman? A. No. [493]

Q. Did you subsequent to that time meet anybody at the Sportsman? A. Yes.

Q. Who did you meet?

A. I met George Pearce and Bob McSharry.

Q. What did you do after that?

A. We drank there for a while, and went down to the Northern Lights and drank some more.

(Testimony of Cedric Theodore Berg.)

Q. Did you meet anybody else during those trips?

A. Not until later in the evening.

Q. Now, that evening you came down town from Mercer Island, early that evening?

A. Yes, we went out there some time during the afternoon, and then we came back down town.

Q. You came back down town? Who came back down town?

A. Well, George and myself and Mrs. Heller. I believe that is all. And Rose came with us.

Q. Did Vicky come down too? A. Yes.

Q. What did you people do when you came down town the second time?

A. We went back to the Sportsman and the Northern Light.

Q. Some time later that evening, say around nine to nine-fifteen, did you go back to the Heller residence? [494]

A. Yes, we did.

Q. Who went back to the Heller residence?

A. It was myself and George and Rose and Vicky; that was all.

Q. Now, later that evening you again left that residence?

A. Yes.

Q. Did anyone remain there?

A. Yes; George and Rose.

Q. What was George Pearce's condition when you left the house at that time?

A. He was drunk, and couldn't walk.

Q. What was Rose West's condition?

A. She was pretty drunk too.



(Testimony of Cedric Theodore Berg.)

Q. Did you state to her you would like her to come back to town with you? A. Yes, I did.

Q. What was her reply?

A. She didn't want to come back to town.

Q. Now, after you left the house that night, what did you do? A. I went back down town.

Q. And then what?

A. I went to various places, and had a few drinks.

Q. Did you end up at the Stork Club? [495]

A. Yes.

Q. What time did you get back to the Heller residence from the Stork Club?

A. Two or three o'clock in the morning.

Q. Who came back to the house with you from the Stock Club?

A. Bob McSharry, Busby, George—not George—Mrs. Heller and myself, and that is all.

Q. Now, when you got back to the house, approximately what time in the morning was it?

A. I said about two or three o'clock in the morning.

Q. What was George Pearce doing?

A. He was sitting up in the kitchen.

Q. Was he drinking? A. Yes.

Q. And Rose West—what was she doing?

A. She was sitting in there with him, drinking.

Q. Were you present at the Heller residence when a woman by the name of Bonnie arrived?

A. Yes.

Q. Had you ever seen this woman before?

(Testimony of Cedric Theodore Berg.)

A. No.

Q. Have you ever seen her since? A. No.

Q. To the best of your knowledge, did she commit any [496] acts of prostitution while she was at the Heller residence that night? A. No.

Q. Now, on that Friday evening, and until Saturday morning, during the period of time you were awake, did you of your own knowledge know whether any acts of prostitution took place in the Heller residence? A. No.

Q. None did? A. None did that I know of.

Q. Now, did you go to sleep at all that night?

A. No, I didn't.

Q. What did you do?

A. I sat up and drank and talked and shot dice.

Q. Some time in the morning of Saturday, April 16th, was it brought to your attention that Rose West Dill had removed some money from somebody's wallet? A. Yes, it was.

Q. Did you have a conversation with Rose West Dill at that time? A. Yes, I did.

Q. Do you recall what you said to her at that time?

A. I asked her to put the money back, and she refused.

Q. Did you examine any of the wallets? [497]

A. Yes, I did.

Q. Whose wallet did you examine?

A. Busby's.

Q. Did you place any of your own money in Mr. Busby's wallet?

(Testimony of Cedric Theodore Berg.)

A. Yes, I did. I put fifty dollars in.

Q. What was your reason for doing that?

A. I didn't want him to think that a girl friend of mine would steal their money from them, and it was pretty embarrassing.

Q. How did you know he was short \$50.00?

A. Well, Mrs. Heller came out and told me Rose had the wallet, and there were seven fifty-dollar bills, and two twenties in it.

Q. Some time after you put your fifty dollars in Mr. Busby's wallet, did you find out that Rose West Dill had gone back into the room where Busby was sleeping?      A. Yes.

Q. Did you check the wallet again?

A. Yes.

Q. Was there money missing again?

A. Yes.

Q. Did you talk to Rose West about that?

A. Yes.

Q. Do you recall the substance of your conversation? [498]

A. Yes; I accused her again of taking the money.

Q. Did you take the money back from her?

A. No.

Q. You never got any part of that money back?

A. I never got it back. She voluntarily herself gave it to Mrs. Heller.

Q. Where was that money?

A. In her mouth.

(Testimony of Cedric Theodore Berg.)

Q. And what did you do with the money after you got it?

A. I washed it off and put it back in the wallet.

Q. Now, shortly thereafter did she leave the house?

A. Maybe another hour or an hour and a half later.

Q. Did she, or at the time she left the house, were you aware that she had left?

A. I was in the kitchen, and she was sitting in the dining room drinking coffee, talking to somebody; and there was a couple of them sitting there, but she got up and left, and went out through the patio.

Q. After the episode that evening, was it still intended between you and Mrs. West—

Mr. Rousso: Withdraw that question. I will restate it.

By Mr. Rousso: [499]

Q. (Continuing): Had you at any time stated on that morning to Mrs. West that you did not intend to marry her?

A. No, the subject was never brought up.

Q. Did you at any time state to anybody that morning that she was just a little tramp; or words to that effect?

A. I may have.

Q. What was your reason for using such language?

A. I was pretty mad.

Q. Now, yesterday were you present when an agent of the Federal Bureau of Investigation testified?

A. Yes, I was.

(Testimony of Cedric Theodore Berg.)

Q. Did you recognize him as being the man that came down and interviewed you down at the county jail?      A. Yes.

Q. So far as you remember, his name was Mr. Crisman?

A. I don't remember his name, but I recognized the man.

Q. You recognize the man?      A. Yes.

Q. Now, he testified in regard to a conversation he had had with you at the jail at the time he came down, is that correct? [500]      A. Yes.

Q. Now, in substance, was his recitation of what you stated to him accurate?      A. Yes.

Q. Now, during his testimony Mr. Crisman said that you had stated to him in substance that you wanted Rose Dill to come up to Seattle for the purpose of marrying her?      A. Yes.

Q. Now, in substance, is that a correct description of your conversation with him?      A. Yes.

Mr. Rousso: I have no further questions.

### Cross Examination

By Mr. Kosher:

Q. Now, you say you have been a seaman for a number of years?      A. Yes, I have.

Q. And have you worked steadily at that business?

A. Yes; as much as possible. I have been in the Army, and I worked for my uncle for a while.

Q. When were you in the Army?

A. From 1951 to 1953.



(Testimony of Cedric Theodore Berg.)

Q. Where did you serve?

A. At Fort Ord, Fort Bragg, and Fort Benning, Georgia.

Q. And you served honorably? [501]

A. Yes.

Q. And your home is at Los Banos?

A. Yes.

Q. Your mother was there? A. Yes.

Q. What kind of work did you do there?

A. I worked at the P. G. and E. for six months, and for my stepfather.

Q. Have you ever accepted any earnings from any prostitutes? A. No, I never have.

Mr. Guterson: I think this is repetition.

The Court: Objection sustained.

You may examine as to matters relating to Mrs. Heller.

By Mr. Kosher:

Q. You testified you had some telephone calls to Los Banos, California, is that correct?

A. That is right.

Q. Do you recall these telephone calls generally?

A. Yes.

Q. And were some of them made from the Heller residence? A. Yes, they were.

Q. Now, at any time when you made these telephone calls [502] did Mrs. Heller talk on the telephone? A. No.

Q. Did you ever introduce Mrs. Heller over the telephone, if such is a possibility, to Miss Dill down in California? A. No.

(Testimony of Cedric Theodore Berg.)

Q. Now, during the time you were living at Mrs. Heller's house, did you know that place to be a house of prostitution? A. No.

Q. Had you ever known Mrs. Heller to have any call girls working for her? A. No.

Q. Did you ever know Mrs. Heller herself to practice prostitution? A. No.

Q. Did you ever have any conversation with Mrs. Heller about bringing Rose up here for the purpose of practicing prostitution? A. No.

Q. Was anything ever said at any time during the time you knew Mrs. Heller about bringing Rose up here for the purpose of practicing prostitution?

A. No.

Mr. Kosher: That is all. [503]

\* \* \* \* \*

### Cross Examination

By Mr. Guterson:

Q. Mr. Berg, it is your testimony, is it, sir, that when you first met Rose West in 1947 she was employed as a prostitute? A. Yes.

Q. When did you go into the service?

A. In 1951.

Q. And from 1947 to 1951, was your home in Los Banos, California? A. Yes.

Q. And during that period of three or four years, was Rose West living in Los Banos, or else in Firebaugh, close by? [505]

A. To the best of my knowledge.

Q. Did you know her during the course of those three or four years? A. Yes.

(Testimony of Cedric Theodore Berg.)

Q. And during that time was she occupied and employed as a prostitute? A. I don't know.

Q. But you know that she was in 1947?

A. Yes.

Q. Do you know whether she was in 1948?

A. No, I don't know.

Q. Did you see her in 1948? A. Yes, I did.

Q. Did you see her in 1949? A. Yes.

Q. And the year 1950? A. Yes, I think so.

Q. And in 1949 and 1950, did you know whether or not she was employed as a prostitute?

A. No, I didn't.

Q. You didn't know what she was doing?

A. No.

Q. Did you see her quite a bit?

A. No; I just seen her now and then.

Q. Did you visit Rose in August of 1954? [506]

A. Yes, I did.

Q. And that was in Los Banos?

A. Yes, it was.

Q. Did you visit Rose again in March, 1955?

A. Yes, I did. And——

Q. And that was in Los Banos? A. Yes.

Q. Before you made your trip to Los Banos in March, 1955, had you discussed Miss West with Mrs. Heller? A. Yes, I did.

Q. Did Mrs. Heller know you were going to Los Banos? A. Yes, she did.

Q. Did she know you were going to see Rose West?

(Testimony of Cedric Theodore Berg.)

A. I never mentioned whether I was going to see Rose West or not.

Q. Excuse me?

A. I don't think I mentioned whether I was or not going to see Rose West.

Q. Did you see Rose West? A. Yes, I did.

Q. Had you been living at Mrs. Heller's home before you made your trip to Los Banos?

A. No.

Q. Now, you recall on Tuesday, Mr. Berg, when Miss [507] West was a witness in this case?

A. Yes, I do.

Q. Do you recall her testimony that when you visited her in March of 1955 in Los Banos, you told her to come on up to Seattle, and that you had a place to stay for her, at a woman's home named Vicky; do you recall that testimony?

A. Yes, I recall her testimony.

Q. Did you have such a conversation with Miss West? A. No, I didn't.

Q. And you returned to Seattle approximately the 28th of March, is that right? A. Yes.

Q. You met Mrs. Heller in a bar you had frequented before, and where you had seen her?

A. Yes.

Q. And she invited you to stay at her home?

A. Yes, she did.

Q. And you accepted her offer? A. Yes.

Q. Did you live there and stay there as if it was your home from the 28th of March until the 15th of April?

(Testimony of Cedric Theodore Berg.)

A. It wasn't from the 28th of March. I didn't go out there until—I believe it was on the first.

Q. First of April? A. Yes.

Q. Did you live there from the first of April until the 15th of April? A. Yes.

Q. And the 16th of April also? A. Yes.

Q. Did you first call Rose West early on a Sunday morning?

A. Yes; I believe it was on a Sunday morning.

Q. Did you place that call from Mrs. Heller's home? A. Yes, I did.

Q. Was that call placed at approximately 6:22 in the morning on a Sunday?

A. Yes, it might have been.

Q. Was Mrs. Heller in the home at the time?

A. I think she was in bed.

Q. Excuse me?

A. I think she was in bed.

Q. Where was the telephone in the home?

A. It was in the living room.

Q. She wasn't in the living room?

A. No, she wasn't.

Q. Did you speak to Rose West on that occasion? A. Yes, I did. [509]

Q. Did you ask her to come to Seattle?

A. Yes, I did.

Q. Was this the first telephone call that you made from Seattle to Los Banos after your return from your trip? A. Yes, I believe so.

Q. Now, I will ask you whether or not during



(Testimony of Cedric Theodore Berg.)

the course of that conversation did you introduce Miss West to Mrs. Heller?

A. I don't know what you are trying to get at.

Q. Did Mrs. Heller speak on the telephone?

A. No, she didn't.

Q. Did you speak to Miss West about Mrs. Heller? A. On the telephone?

Q. Yes. A. Yes, I may have.

Q. What did you say?

A. I think I told her I was living with some friends of mine, and that they were helping me find a place for her to live.

Q. Who were the friends?

A. Well, Mrs. Heller, and Gerry Scheurman.

Q. Anyone else? A. No.

Q. Gerry Scheurman was living there also?

A. No, she wasn't living there. [510]

Q. Then it was just Mrs. Heller and yourself?

A. Yes.

Q. Just a friend—not "friends"?

A. What I meant by that was, friends was helping me find a place to live.

Q. I am asking you what you told Miss West?

A. Yes; basically. I don't remember the exact words.

Q. I think you spoke to her about 12 minutes; does that sound about right?

A. Yes; I think I might have.

Q. Now, do you recall, Mr. Berg, yesterday afternoon and yesterday morning when Mr. Gunn of the F.B.I. was a witness in this case?

(Testimony of Cedric Theodore Berg.)

A. Yes, I do.

Q. Do you recall that he testified to the conversation which you had with Mrs. Heller on March 28th, or April 28th, 1955? A. Yes.

Q. Do you recall that Mr. Gunn testified that during the course of that conversation with Mrs. Heller, that she told him that on this early Sunday morning call she spoke to Miss West?

Mr. Kosher: I object to that on the grounds it is improper cross. [511]

The Court: Objection sustained.

By Mr. Guterson:

Q. Did Miss West during the course of your conversation agree to come to Seattle?

A. Yes, she said she would come.

Mr. Rousso: Will you relate that to a time and place, counsel?

By Mr. Guterson:

Q. Sunday morning, April 3, 1955.

A. Yes, she did.

Q. Do you recall when it was the next time you talked to Miss West on the phone?

A. No, not the day.

Q. Did you ever make any calls to Miss West in Los Banos from a place other than Mrs. Heller's home? A. Yes, I did.

Q. Do you recall where you made those calls at?

A. Yes, I believe one of them was down at Pier 39 or in a service station right next to it.

Q. Did you pay for those calls yourself?

A. Yes, I did.

(Testimony of Cedric Theodore Berg.)

Q. And they were made at a pay phone?

A. Yes, they were.

Q. During the course of the second conversation you had with Miss West, you say that was a couple of days later? [512]

A. Maybe the next day or a couple of days later. I don't remember how much time elapsed in between.

Q. Did you discuss anything having to do with money with Miss West?

A. Yes, it was on the second or third call we discussed that.

Q. Did she say she didn't have enough money to come to Seattle?

A. No, she said she needed money to pay some bills with, baby sitter and telephone bill and rent.

Q. Were you discussing at that time whether or not she would come to Seattle?

A. Yes, we were.

Q. I hand you Plaintiff's Exhibit 2, Mr. Berg. Is the penciled printing on that document yours?

A. Yes, it is.

Q. Did you make that out at the Western Union office in Seattle?      A. Yes, it is.

Mr. Rousso: Your Honor, it has been admitted Mr. West sent a \$60.00 money order. We have no objection to that being in as sent by him.

The Court: It is already in evidence.

Mr. Guterson: Yes. [513]

Mr. Rousso: Yes. I mean Mr. Berg.

(Testimony of Cedric Theodore Berg.)

By Mr. Guterson:

Q. That is your writing, Mr. Berg?

A. Yes, it is.

Q. Did you make that out at the Western Union office?

A. Yes.

Q. Do you recall Mrs. Fick, the lady who testified and stated she waited on you; do you remember her?

A. No.

Q. Do you remember giving whoever served you \$60.00?

A. Yes, I gave more than \$60.00.

Q. \$61.96?

A. Yes.

Q. Did you pay that in cash?

A. Yes, I did.

Q. At the bottom of this telegram, is this also in your writing, where it says, "her own phone number 2404"?

A. Yes.

Q. You supplied that information?

A. Yes.

Q. That is the phone you have been calling?

A. Yes.

Q. And then you say that because she didn't come [514] right away on the 7th of April, you made two or three more phone calls?

A. Yes.

Q. Were those made from Adams 5680?

A. Yes; two or three of them were made from there.

Q. That was Mrs. Heller's phone?

A. Yes, it was.

Q. During any of these conversations from Mrs. Heller's home, was Mrs. Heller at the house?

(Testimony of Cedric Theodore Berg.)

A. Yes; she could possibly have been there on all of them. I don't remember whether she was in the house or not.

Q. Is it your testimony, sir, that on no occasion did she speak on the phone?

A. Yes, it is.

Q. Did you advise Miss West of Mrs. Heller's phone number? A. Yes, I did.

Q. Did you tell Miss West to call Mrs. Heller?

A. No, I didn't.

Q. When she arrived in Seattle?

A. No. I told her to call when she got in.

Q. Excuse me.

A. I did tell her to call when she got in.

Q. To call Adams 5680? [515] A. Yes.

Q. Now, you testified, I believe, Mr. Berg, that during the time you visited Miss West in March of 1955 at Los Banos, you spent one night at some club with some of your friends? A. Yes.

Q. And that during the course of your evening together you and Miss West discussed marriage?

A. Yes, we did.

Q. In the presence of your friends?

A. No, she told them herself.

Q. She told your friends? A. Yes.

Q. In your presence? A. Yes.

Q. Now, do you recall that on the 12th of May you had this conversation at the jail with Mr. Crisman of the F.B.I.? A. Yes, I do.

Q. Did you discuss this matter with Mr. Crisman?



(Testimony of Cedric Theodore Berg.)

A. No, I don't know whether I did or not.

Q. Did you advise him as to this conversation in your presence that Miss West had with two or three of your friends in Los Banos?

A. No. [516]

Q. Did you speak on the phone with Miss West early in the morning of Wednesday, April 13, 1955?

A. Yes, I did.

Q. And she arrived at the home of Mrs. Heller shortly after that talk?

A. Yes, she did.

Q. Do you recall whether she slept that morning or stayed awake?

A. I believe she went to bed about some time after ten o'clock.

Q. Do you recall whether Mrs. Heller was at the home?

A. Yes, she was.

Q. Do you recall whether Mrs. Heller stayed at the home during the early morning hours?

A. We left some time that morning before noon or around noon.

Q. When you say "we," who do you mean?

A. Mrs. Heller and myself.

Q. Miss West stayed at the home?

A. Yes.

Q. And you were gone during the course of the day and came back about nine o'clock at night?

A. Yes.

Q. And was that the day you were looking for automobiles? [517]

A. Yes.

Q. You spent some time at the Firelight Room at the Moore?

A. Yes.

Q. Miss West wasn't with you at all?

(Testimony of Cedric Theodore Berg.)

A. No, she wasn't.

Q. And the following day did you and Mrs. Heller go out again?      A. No.

Q. What did you do on Thursday?

A. I stayed home most of the day.

Q. Excuse me?

A. I stayed home most of the day.

Q. On Friday morning you say you borrowed Mrs. Heller's car to go down to the ship, is that correct?      A. Yes.

Q. Were you away most of the day on Friday?

A. Yes, until some time late in the afternoon.

Q. Yes. During the day?      A. Yes.

Q. Was Miss West with you?

A. No, she wasn't.

Q. And when you came home, then, did all of you go downtown? [518]      A. Yes.

Q. Miss West, Mrs. Heller, and yourself?

A. Yes.

Q. And later that evening you returned home and left Miss West there and you and Mrs. Heller returned again?      A. Yes.

Q. You went down town and returned about three in the morning with Mr. McSharry and Mr. Busby?      A. That is right.

Q. And during the course of that night Miss West wasn't down town with you?

A. No, she wasn't.

Q. Was it early on Friday evening that you went down town; was that the only time during the

(Testimony of Cedric Theodore Berg.)

three or four days that Miss West was here that she accompanied you when you left the home?

A. Yes, I believe it was.

Q. The rest of the time you either left her alone or with Mrs. Heller? A. Yes.

Q. And whichever way it was, Miss West did not go with you.

A. She may have went some other time; I don't remember exactly. [519]

Q. When you left Miss West at the Heller home when you and Mrs. Heller left Friday evening, was Mr. Pearce there? A. Yes, he was.

Q. Mr. Pearce came out to the home with Mrs. Heller at three o'clock, and both he and Miss West had been drinking considerably? A. Yes.

Q. And you say Mr. Pearce passed out?

A. Yes, he did. No, he didn't pass out, exactly, but he was pretty drunk.

Q. During the times that you and Mrs. Heller were away during Friday, do you know who was at home with her children?

A. No, I don't know.

Q. Excuse me? A. No, I don't know.

Q. Did you see her sister there?

A. I don't know that she has a sister.

Q. Her sister-in-law?

A. Yes, I believe she was there that day.

Q. You think she was there?

A. She might have been.

Q. Now, when you returned to the home about three o'clock on Saturday morning with Mr. Mc-

(Testimony of Cedric Theodore Berg.)

Sharry and Mr. Busby, [520] was Miss West there?

A. Yes, she was.

Q. Did you introduce her to Mr. McSharry and Mr. Busby? A. I imagine I did.

Q. They had never seen her before, had they?

A. No.

Q. As far as you know?

A. As far as I know.

Q. That was the first time they were at the house while Miss West was there? A. Yes.

Q. And did you introduce Miss West to them as your wife?

A. I don't think so. I don't think so; I may have.

Q. How did you introduce her?

A. I don't remember exactly how I introduced her. That is five months ago.

Q. Do you recall when Mr. McSharry was on the witness stand yesterday, Mr. Berg?

A. Yes, I do.

Q. Do you recall when he testified, he testified that when he arrived at the home at three in the morning, you introduced Rose West as your wife?

A. Yes.

Q. Do you recall that? A. Yes.

Q. Is that how you introduced him?

A. I don't know.

Q. Do you recall after Rose left the home about ten-thirty or eleven on Saturday morning, you went out looking for her? A. Yes.

Q. Do you recall those events? A. Yes.

(Testimony of Cedric Theodore Berg.)

Q. Did you go to the home of Mrs. Keating, who has been a witness in this case?

A. Yes, I did.

Q. Now, when you came to Mrs. Keating's door, did you ask Mrs. Keating whether or not your wife was there?

A. Yes, I did.

Q. On Saturday morning before Rose left the home, were you in the kitchen and in the dining room with Mrs. Heller and Mr. McSharry during part of that period when Rose was sitting at the dining room table?

A. Yes.

Q. Do you recall whether or not Mr. McSharry asked you how it was that you permitted that type of conversation to go on in front of your wife?

A. I don't recall what he asked me.

Q. Do you recall him testifying to that fact?

A. Yes, I do.

Q. You don't recall whether he said that or not?

A. Who said what?

Q. Do you recall whether or not Mr. McSharry asked you how come you permitted that type of conversation to go on in front of your wife?

A. I don't recall that.

Q. He may have asked you that?

A. Yes, he may have asked me that.

Q. And did you tell him, "She is just a tramp from Frisco"?

A. I may have.

Q. Did you arrange with Miss West before she came to Seattle that she should come by airplane?

A. No.



(Testimony of Cedric Theodore Berg.)

Q. And did Mrs. Heller ever state to you that she would like Rose West to come to Seattle for purposes of prostitution? A. No.

Q. Now, you also stated that you had friends, meaning Vicky Heller and Miss Scheurman, I understand, who helped you find a place to live?

A. Yes.

Q. Was your residence at the Heller home only temporary, then? A. Yes, that is right.

Q. And when did you intend to leave that residence?

A. As soon as I found a place to live.

Q. And as soon as you found a place to live, did you also intend to get married? [526]

A. Yes, I did.

Q. Now, a further question was asked, whether you had ever told Rose West in one of your telephone conversations to call Vicky Heller when she got to town.

Now, did you tell Rose West to call Vicky Heller, or did you tell Rose West to call you at Vicky Heller's home?

A. I told her to call Adams 5680.

Q. You didn't tell her to specifically call Vicky Heller? A. No.

Q. Saturday morning, then, you went to Mrs. Keating's home? A. Yes.

Q. Do you recall? A. Saturday morning.

Q. Do you recall why you went there?

A. Yes, to see if Rose went over there. She left, and didn't have a coat on, or anything.

(Testimony of Cedric Theodore Berg.)

Q. And why did you want to see Miss West?

A. I wanted to talk to her.

Q. Now, in regard to that Friday evening or early Saturday morning, being the 15th or 16th of April, you testified there were several gentlemen not from the Polk present, is that correct? [527]

A. That is right.

Q. Can you tell me what those gentlemen were doing while they were there?

A. Oh, drinking; some of them were shooting dice.

Q. To your knowledge did any of those gentlemen, or any of the gentlemen from the Polk, engage in any acts of sexual intercourse while they were there that night?      A. No.

Mr. Rousso: I have no further questions.

### Recross Examination

By Mr. Kosher:

Q. Just one question, if I might ask:

Isn't it a fact that during the three days that Rose was here, the three or four days that she was here, that everybody concerned was doing a lot of drinking?      A. Yes, we were.

Mr. Kosher: I think that is all.

Mr. Guterson: I have nothing further.

Mr. Rousso: That is all.

(Witness excused.) [528]

\* \* \* \* \*

The Court: Ladies and gentlemen of the jury: You have listened patiently for the last three days almost now to the testimony, much of which has been sordid and revolting, which happens when we have cases of this kind. That does not in any way detract from the right of any defendant to a fair and impartial trial, even though the facts brought forth may serve to developed to be sordid, and, as I say, revolting.

Having heard that testimony and the argument of counsel the Court will now instruct you as to the law, and as you should apply it to the facts.

I think all of you, with the exception of one or two, have served in criminal cases before, and you know the instructions do not go with you to the jury room, and, therefore, you will have to call upon your recollection of the Court's instructions as to the law, and interpret them to the facts as you find the facts from the evidence when you go to the jury room. [611]

You are to be guided by these rules of law as the Court gives them to you, applying them to the facts. They are to be understood by you as a whole. They are to be interpreted and applied by you as a connected body and as an entirety. You should not single out one instruction as stating the law but, again, consider them as a whole.

Apart from any opinion you may have as to what the law is, or what it ought to be, it is your obligation under your oath to take and accept the law as the Court gives it to you in these instructions.

At the outset the Court read the indictment to you, and as you will recall and as I will advise you later, these defendants were indicted by the Grand Jury, and they entered a plea of not guilty to the charges contained therein, and that means that they deny each and every material allegation contained in the indictment.

By pleading not guilty they place upon the government the burden of proving beyond a reasonable doubt every material allegation contained in the indictment. The indictment itself is but a formal method of accusing the defendant of a crime. It is not evidence of any kind against them. It does not create any presumption, nor permit any inference, of guilt. Rather, the law presumes every defendant to be innocent until he or she is proven [612] guilty by the evidence beyond a reasonable doubt.

This presumption is not a mere matter of form, but is a substantial right of every defendant, and this presumption continues throughout the entire trial and until such time as you have found that it has been overcome by the evidence beyond a reasonable doubt.

It is your duty and you have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the plea of not guilty entered by the defendants.

You are to perform this duty without prejudice, bias or sympathy. The punishment provided by law for the offense charged in the indictment is a

matter exclusively within the province of the Court, and it is not to be considered by the jury in determining and arriving at an *impartial* as to the guilt or innocence of the defendants.

I have used the term "reasonable doubt." That term means in law just what the words imply, a doubt based upon some good reason. It is one that must arise from the evidence or which may just as well arise from the lack of evidence in the case. It must be a substantial doubt, one which an honest, sensible, fair-minded man or woman might with reason entertain consistent with a conscientious desire to ascertain the truth. [613]

You must use your common sense, as men and women possessing some knowledge of the ways of the world, and, if, after examining carefully all the facts and the circumstances established by the evidence in this case, you can feel and say that you have a settled and abiding conviction of the guilt of the defendants, then you are satisfied beyond a reasonable doubt. If you have not such a conviction, then you should acquit the defendants.

A reasonable doubt may not be based upon a mere whim, sympathy, suspicion, or some vague possibility.

On the other hand, proof beyond a reasonable doubt does not mean that the evidence should establish the guilt of a defendant beyond all possible doubt. The law does not require absolute certainty of guilt before there can be a verdict of guilty at your hands.



Now, what kind of evidence do we have? First, there are two general types. One is direct or positive. The other is circumstantial.

Direct and positive testimony generally is that which a person sees, hears, smells, observes by virtue of the use of the senses.

Circumstantial evidence is proof of facts and circumstances concerning the transactions or the conduct of the parties which conclude or lead to certain [614] inevitable conclusions.

Circumstantial evidence is legal and competent as a means of proving guilt in a criminal case. However, the circumstances must be consistent with each other, consistent with the guilt of the parties charged, inconsistent with their innocence, and inconsistent with every other reasonable supposition or hypothesis except that of guilt, and when circumstantial evidence is of such a character, circumstantial evidence alone, without any direct testimony at all, is sufficient to convict and you will review all the circumstances established by the evidence in the light of this instruction or the instruction I have just given you relative to circumstantial evidence.

In the course of these instructions I use and have used the words "inference" and "presumption."

An inference as we use it in these instructions means a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A presumption, such as a presumption of inno-

cence, is an inference which the law requires the jury to make from particular facts in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence [615] to the contrary, but unless so outweighed, the jury is bound to find in accordance with the presumption.

Coming now to the charge in this case against the defendants, the indictment returned against them read as follows: You will get it and take it with you to the jury room, where you may study it, and I will give it to you in full because it is rather short, and, I believe, understandable. The indictment is contained in one count, and is as follows:

That on or about April 13, 1955, Cedric Theodore Berg and Victoria Ruth Foughty Heller did knowingly, willfully and unlawfully persuade, induce and entice Rose Drucilla West, a female person, to go from San Francisco, California, to the Northern Division of the Western District of Washington, with the intent that the said Rose Drucilla West should engage in the practice of prostitution, debauchery, and for other immoral purposes, and did thereby knowingly cause the said Rose Drucilla West to go and be transported as a passenger upon the line and route of a common carrier in interstate commerce.

All in violation of Section 2422, Title 18, U.S.C.

I might state here at this point that the Northern Division [616] of the Western District of Washington is the area wherein Seattle is, and if

you believe from the evidence that the witness or the person, Rose West, came to an airport or came to the City of Seattle, she would be in the Western District of Washington, Northern Division; so that I think for the purpose of testimony here, you might consider the Northern Division, Western District of Washington, to be the same as Seattle and the vicinity of Seattle.

Now, the indictment returned by the Grand Jury in this case charges a violation of what is known as the White Slave Traffic Act and insofar as the Act is pertinent here, it provides that:

“Whoever knowingly persuades, induces or entices . . . any woman or girl to go from one place to another in interstate or foreign commerce . . . with the intent or purpose that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice . . . and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier in interstate commerce . . .” shall be punished.

That is the indictment and that is the law under which it is returned. [617]

So that you may better understand the nature of the charge, I will advise you now as to the essential elements of the offense charged.

Before you can find either of the defendants guilty of the offense charged in the indictment, you must find that the following essential elements of the offense charged are established as to such de-

fendant, which means each defendant, from the evidence beyond a reasonable doubt:

These are the four elements:

First, that Rose West, a woman, was persuaded, induced or enticed by such defendants—that would be either—you must consider each one separately—to go from San Francisco, California, to the Northern Division of the Western District of Washington; or, in other words, to Seattle.

Second, that such defendant knowingly persuaded, induced or enticed Rose West so to do.

Third, that such defendant so persuaded, induced or enticed said Rose West with the intent that she, Rose West, should engage in the practice of prostitution.

Fourth, that because of such persuasion, inducement or enticement such defendant knowingly caused Rose West to be transported as a passenger upon the line [618] of a common carrier in interstate commerce.

A common carrier may be defined as one who holds himself or itself out to the public as engaged in the business of transporting persons or property from place to place for compensation.

The word “knowingly” as used in the instructions and in the law means this—that an act is done voluntarily and purposefully, and not because of mistake or some inadvertence or some other innocent reason.

As I indicated before, you must consider each defendant separately, and in doing so you must



consider the evidence separately as to each defendant.

Certain evidence was introduced, as you recall, and on certain occasions the Court indicated that it could be considered only with respect to one or the other of the defendants. Bear that in mind. If as to one defendant you find that all the elements which I have enumerated have been established beyond a reasonable doubt, you should find that defendant guilty. On the other hand, if you have any reasonable doubt as to one of the essential elements, you should acquit the particular defendant concerned.

The law under which this indictment has been returned is a Congressional exercise of rightful power forbidding the use of interstate transportation and commerce [619] as an agency to promote immorality such as prostitution and debauchery. We are not here primarily concerned with the morals of the defendants or with the character of Rose West. It makes no difference so far as the offense here charged is concerned whether Rose West was a depraved or an innocent woman. The United States is concerned only with the question of whether she was induced, and thereby caused, to be transported by a common carrier in interstate commerce from San Francisco, California, to the Western District of Washington for the purpose of prostitution.

The law is directed against the use of interstate transportation or commerce for immoral purposes or in promoting or carrying out such practices.



It seems undisputed from the evidence that Rose West, prior to the time here involved, had engaged in prostitution. Therefore, there is no wounded innocence or corrupted virtue involved. However, the law is violated whether it be innocence or depravity that was induced and thereby caused to be transported in interstate commerce by common carrier from one state to another with the intention and purpose of promoting prostitution.

You are instructed that the government need not prove that acts of prostitution actually occurred under the charge of this indictment but it is sufficient for the [620] government to prove that a defendant intended that Rose West, a woman, should engage in prostitution when she reached the Western District of Washington, and whether Rose West did so actually engage need not be established by the government in order to sustain the charge set forth in the indictment.

Evidence has been admitted in this case with respect to whether Rose West engaged in prostitution at the home occupied by Mrs. Heller. Also, there has been evidence admitted with respect to certain alleged activities of Mrs. Heller and defendant Berg which might tend to indicate that acts of prostitution on the part of Rose West and other persons were encouraged and promoted. This evidence is admitted solely for the purpose of establishing, if you so find, the intent of the defendants, Mrs. Heller and the defendant Berg, when they induced or persuaded and knowingly caused Rose West to come from San Francisco to Seattle, if

you find from the evidence that they did so persuade and knowingly cause Rose West to come. Therefore, if you should find from the evidence that Rose West engaged or committed acts of prostitution while in Seattle, or that the defendants engaged in immoral practices in violation of state or city law, such fact would be immaterial to the case, for you should not concern yourself with whether or not the defendants or [621] any witness should be punished for violating the state or city law. That is a matter solely for the state or city authorities and a matter over which this Court has no control or jurisdiction.

Now, in every crime there must exist a union or joint operation of act and intent. The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

A person is held to intend all the natural and probable consequences of acts knowingly done. That is to say, the law assumes a person to intend all the consequences which one standing in like circumstances and possessing like knowledge should reasonably expect to result from any act which is knowingly done. Intent may be inferred from all the evidence in the case, including any acts done or statements made by the accused. The jury should consider all the facts and circumstances in evidence which may aid determination of the issue as to intent, and, of course, in this case intent is a very basic element and a very important one.

Intent may be proved by circumstantial evidence, and actually it rarely can be proved by any other

means because while we know what witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eye witness [622] account of the state of mind with which the acts were done or omitted. But, what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

It is not necessary for the government to prove that the sole and single purpose of transportation of Rose West in interstate commerce was prostitution. It is enough that one of the dominant purposes in the minds of the defendants was that she should so engage.

Again, I caution you that you must consider the evidence as to each defendant separately.

You are instructed that the necessary intent, purpose and motive on the part of each of those accused in a prosecution for alleged violations of the White Slave Traffic Act may be proved by circumstantial evidence. I have commented on that before and the conduct of the parties, a reasonable time before and after the transportation alleged, may be taken into consideration by you in the determination of the intent of the defendants.

You are instructed that any statements made by a party defendant, not in the presence of a co-defendant, may be considered by you solely as against the party making the statement. However, statements of a party defendant which were made within the presence of a co-defendant may be considered by you as against both. [623]

As to the issue of credibility—who are you going to believe—that in this case as in most cases is very important.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak the truth, but this presumption may be outweighed by the manner in which the witness testifies and by the character of the testimony given or by contradictory evidence.

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief; and consider each witness's intelligence, motive and state of mind, his or her demeanor and manner while on the stand; and, consider also any relation each witness may bear to either side of the case, and the manner in which each witness might be affected by the verdict, and the extent, if at all, to which each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony.

Two or more persons witnessing an incident or [624] a transaction, or hearing a conversation, may see or hear it differently, and an innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, consider



whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves.

It is your duty, and I am confident you are well aware of it under your oath, consciously, seriously and free from prejudice or sympathy, to return a true verdict under the evidence and these instructions. It is not the policy of the law that a verdict of guilty should be returned against any one on trial unless such verdict is supported by the evidence beyond a reasonable doubt; but, it is likewise against public policy that any person who has violated a law should escape if the testimony shows such person is guilty beyond a reasonable doubt.

It is your duty as jurors to confer with each other freely and frankly about the issues involved in this case and the testimony and the evidence and the many questions [625] that present themselves to you for the purpose of agreeing, if you can honestly do so, upon a common verdict. In the end, your verdict must be that of all twelve of you and a verdict representing an opinion of any lesser number is not a lawful verdict.

The law of the case is for the judge and I have sought to give it to you in these instructions, and it is your duty to accept the law as I have stated it. Likewise, you are bound to accept rulings that the Court has made throughout the trial of the case



as to the evidence. When objections are overruled or sustained, it doesn't mean, and you should not take any ruling of the Court to indicate, what the Court believes as to that evidence, whether admitted or excluded. As to the facts in the case, what the evidence proves, what weight to give to the testimony of the various witnesses, and particularly what inferences should be drawn from the facts and circumstances proved, that is exclusively your function. With respect to that you are to be controlled by neither any opinion that the Court may see fit to express nor by the arguments of counsel, although you have listened with respect, and are entitled to any aid counsel may give you in summarizing and recalling and explaining the facts.

As to what the facts prove, should you have [626] an opinion that the Court, because of any ruling or because of any comment made or because of anything stated in these instructions, has expressed an opinion as to the guilt or innocence of the defendants or as to the credibility or weight of the testimony of any witness, I want to advise you that you should not be controlled or influenced in any respect by the Court's ruling when you are considering what the facts are. The Court's rulings are binding so far as you are concerned as to the law. So, again, what the facts are, what you find them to be, that is your responsibility.

Should it become necessary during your deliberations to communicate with the Court, you may do so by sending a note through the bailiff. I assume that will not be necessary in this case. Should it

happen, be cautious you do not reveal at any time how the jury stands numerically or otherwise with respect to the guilt or innocence of either defendant.

You know from your former experience that you select one of your group as foreman or forelady, and then proceed with your deliberation, giving everyone an opportunity to express his views.

The form of verdict has been prepared for you and it is typed out, and it reads:

We, the jury in the above-entitled case, [627] find the defendant Cedric Theodore Berg, and then there is a blank, and if you find him guilty, put in there the word "is," and if not, put in "not," and the same as to the defendant Victoria Ruth Foughty Heller.

It should be signed by your foreman, and should be dated. I assume that the date will be today.

The exhibits will go with you to the jury room along with the indictment and the form of verdict.

Do counsel anticipate any suggestions or exceptions with respect to the instructions?

Mr. Rousso: Yes, your Honor.

Mr. Guterson: I have none.

The Court: All right. The jury will go to the jury room.

Do not begin your deliberations until you have been further advised. If the Bailiff brings up the form of verdict, the Indictment, and the exhibits to you and gives them to you, that will indicate you may proceed with the deliberations. Do not do it before that. It may be that the Court will have occasion to call you back and give you some addi-

tional instructions or modified instructions already given to you. You may now be excused.

(Whereupon, the jury retired from the court room.) [628]

The Court: You have no suggestions?

Mr. Guterson: No, your Honor.

Mr. Rousso: If the Court please?

The Court: Yes?

Mr. Rousso: On behalf of the Defendant Cedric Theodore Berg at this time I want to take exception to the instruction given by the Court in regard to the elements which he identified as element number four of the offense, reading as follows:

The Court: I have that, if you want it. Do you have it accurately?

Mr. Rousso: If I may have it, sir.

The Court: I added a word or two here and there but didn't change the sense.

Mr. Rousso: Defendant Berg excepts to element four, to wit:

"That because of such persuasion, inducement or enticement such defendant knowingly caused Rose West to be transported as a passenger upon the line of a common carrier in interstate commerce."

We do not feel that that instruction is consistent with the law under the circumstances; that the instruction given in its context is prejudicial [629] to the Defendant Berg.

The Court: How would you suggest——

Mr. Rousso (Interposing): Our suggested instruction would read as follows:

"That said Defendant knowingly caused Rose

West to be transported as a passenger upon the line of a common carrier in interstate commerce.”

Striking out:

“. . . because of such persuasion, inducement or enticement. . . .”

The Court: The other three elements you do not take exception to?

Mr. Rousso: I don't believe so, no.

Mr. Volinn: I would take further exception to the instruction generally along the lines I have previously mentioned as being based upon evidence which is non-existent, to-wit:

There is no evidence in this case, as we see it, of a common carrier and, therefore, the entire instruction is not warranted.

The Court: That the case should not have gone to the jury?

Mr. Volinn: Yes. I should like to see the instruction which deals with the law—relating to the purpose of the law. There was one instruction [630] wherein it was stated that the purpose of the law is to prevent——

The Court: You mean the comment?

Mr. Volinn: Yes. The enactment.

The Court: “The law under which this Indictment has been returned is a Congressional exercise of rightful power forbidding the use of interstate transportation and commerce as an agency to promote immorality such as prostitution and debauchery.”

Mr. Volinn: I think that might be prejudicial, your Honor.

The Court: Do you want to except to it?

Mr. Volinn: Yes, I except to it on behalf of the Defendant Berg.

Mr. Kosher: Your Honor, on behalf of the Defendant Heller may I take exception to the same instructions and adopt the same grounds?

Mr. Volinn: It seems to me it is a comment.

The Court: No question about it being a comment.

Mr. Rousso: I think that is all from our point of view, your Honor.

The Court: All right; then I think we [631] will let it go. I do not believe it is erroneous. I will say this, gentlemen, I think there is a question on that on an exception. There is some reason to believe that from those cases in the Seventh Circuit that, if followed, they might conceivably hold that it would be necessary to establish some cause apart from inducement. However, as I read the statute, I can not come to any conclusion other than that the cause must result from the inducement. I have been unable to find a case which actually covers the point.

Mr. Rousso: Well, the only reason we feel the way we do is because of the word "thereby", which is the premise of the Court's thinking. The word "thereby" appears in the old statute as well as in the new statute.

The Court: Well, sometimes even the Court of Appeals is wrong, so I won't change my instructions.

Do you have any objection to a procedure of let-



ting the jury now take the exhibits and starting in without calling them back?

Mr. Volinn: No, your Honor.

Mr. Kosher: None at all. We have no objection.

\* \* \* \* \*

The Court: If you think you are making progress, I will have nothing further. If you think you are having difficulty, why, I have some thoughts to suggest to you; but if you are making progress I would rather you go ahead with the idea of reaching agreement.

I wish to make this observation. Do you think now you are making some progress and are going to reach a verdict one way or the other?

I am not asking you how you are going to reach it. There may be some doubt in your mind. I will give you these thoughts that you may wish to consider in [637] your deliberations along with the evidence and the instructions I have previously given you.

This case is an important one, and if you should fail to agree on a verdict the case is left open and undecided, and, like all cases, it must be disposed of some time, and there doesn't seem to be any reason to believe that the case can be tried any better or more exhaustively than it has been by either side. Any future jury that must be selected to try this case will be selected in the same manner and from the same source as you have been chosen, and there appears to be no reason to believe that the case would be ever submitted to twelve men and women who are any better qualified or more intel-

ligent or more impartial or more competent to decide it, or that more or any clearer evidence could be produced on behalf of either side.

Now, these matters, of course, suggest themselves upon reflection, a brief reflection, to all of us who have participated or sat through this entire trial. Now I mention this so that you will bear that in mind in reviewing the evidence. Now I don't indicate to you that you should—how you should determine the case at all. I remind you it is important that you reach a verdict of guilty or not guilty if you can do so without violence to your individual judgment and conscience. [638]

The Court doesn't wish you or any juror to surrender his or her own conscientious convictions as to guilt or innocence, nor to surrender your convictions as to the weight or effect of any of the evidence solely because of the opinion of some other juror or for the mere purpose of reaching a verdict.

However, it is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can without violence to your own individual judgment. You each must decide the case for yourself from the evidence and following the instructions of the Court. Of course, you, in the course of your deliberations, should not hesitate to change your opinion if you become convinced that it is erroneous. Bear in mind that for twelve minds to reach a unanimous result you must examine the question submitted to you with frankness and candor and with proper deference in regard to the opinions of each other. That is to say,

in conferring together you should be able to do it respecting the views of the others and listen to the views of one another with a disposition to re-examining your own.

If a much greater number of you are for conviction, each dissenting juror ought to consider whether a doubt in his or her own mind is a reasonable one, if it makes no effective impression upon the minds of any other [639] equally honest, equally intelligent fellow jurors who bear the same responsibility and serve under the same sanction and the same oath and have heard the same evidence and given it the same attention and who undoubtedly have the same and an equal desire to arrive at the truth. On the other hand, if a larger or even a lesser number of you are for acquittal, other jurors ought to seriously ask themselves again whether or not they have or do not have reason to doubt the correctness of a judgment not concurred in by a number of your fellow jurors and where there is sufficient evidence which fails to convince the minds of their fellow jurors to a moral certainty and beyond a reasonable doubt.

As I have stated in the course of my instructions following the argument, you are not partisans. You are judges of the facts in this case. Your sole purpose is to ascertain the truth from the evidence before you, and, as I stated and repeat again, you are the sole and exclusive judges of the credibility of all the witnesses, the sole and exclusive judges of the weight and effect of the evidence. In this high duty and performance of it you are at liberty

to disregard all the comments or *opinion* the court and counsel and you, of course, are at liberty to disregard the remarks I am now making to you. Remember that at all times, or at no time, I should say, [640] is a juror expected to yield a conscientious conviction that he or she may have as to the weight or effect of the evidence, bearing in mind, also, that after full deliberation and consideration of all the evidence it is your duty to agree upon a verdict, if you can do so without violating your own judgment and conscience.

So I suggest that you conduct your deliberations when you go back as you choose, but carefully re-examine and reconsider all the evidence bearing on the questions before you, and do your utmost to reach a verdict in accordance with the instruction I have given you.

Now, you may retire and continue your deliberations in such manner as you shall determine, using your good conscience and judgment as reasonable men and women.

I hope you will be able to make some progress.

(Whereupon, the jury retired from the court room.) [641]

\* \* \* \* \*

[Endorsed]: Filed January 17, 1956.

[Endorsed]: No. 15000. United States Court of Appeals for the Ninth Circuit. Cedric Theodore Berg and Victoria Ruth Foughty Heller, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: January 19, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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United States Court of Appeals  
for the Ninth District

No. 15000

VICTORIA RUTH FOUGHTY HELLER,  
Appellant,  
vs.

UNITED STATES OF AMERICA,  
Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT WILL RELY

The appellant, Victoria Ruth Foughty Heller, will rely on the following points in this proceeding:

1. The District Court erred in denying the Motion of defendant, Victoria Foughty Heller, for acquittal.



(a) That the evidence was insufficient to take the case to the jury.

(b) That there was no evidence that the alleged victim was transported by a common carrier.

2. The Court erred in advising the jury that the purpose of the Mann Act was to prevent immorality.

3. The Court erred in finding that the Indictment was not erroneous in failing to allege the place where the alleged crime was supposed to have been committed.

/s/ MAX KOSHER,

Attorney for Appellant, Victoria Ruth Foughty  
Heller.

[Endorsed]: Filed January 24, 1956. Paul P.  
O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S STATEMENT OF POINTS TO  
BE RELIED UPON ON APPEAL AND  
DESIGNATION OF RECORD ON APPEAL

Comes now appellant above named and advises the Court that on his appeal he intends to rely upon each and all of the following points, to wit:

1. Insufficiency of the evidence to establish the charge or to support the verdict and/or judgment on the charge contained in the indictment.

2. That the District Court and the Judge thereof erred in denying appellant's motion made at the conclusion of all the evidence in the case for a judgment of acquittal.

3. That the verdict is contrary to the weight of the evidence.

4. That the verdict is not supported by substantial evidence.

Appellant Berg hereby designates the entire record, including all minute orders and the exhibits introduced in the trial in the above entitled cause, as the contents of his record on appeal.

Dated: May 21, 1956.

/s/ CEDRIC THEODORE BERG,  
In Propria Persona.

[Endorsed]: Filed May 23, 1956. Paul P. O'Brien,  
Clerk.

No. 15000

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United States Court of Appeals  
For the Ninth Circuit

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VICTORIA RUTH FOUGHTY HELLER, *Appellant*,  
v.  
UNITED STATES OF AMERICA, *Appellee*.

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Appeal from Judgment and Sentence in the United  
State District Court for the Western District  
of Washington, Northern Division

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BRIEF OF APPELLANT

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MAX KOSHER  
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PUGET PRESS, EVERETT, WASH.

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PAUL P. O'BRIEN, CLERK

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# United States Court of Appeals

## For the Ninth Circuit

|  |   |           |
|--|---|-----------|
| VITORIA RUTH FOUGHTY HELLER,               | } | No. 15000 |
| <i>Appellant,</i>                          |   |           |
| vs.  |   |           |
| UNITED STATES OF AMERICA, <i>Appellee,</i> |   |           |

Appeal from Judgment and Sentence in the United  
State District Court for the Western District  
of Washington, Northern Division

### BRIEF OF APPELLANT

#### JURISDICTION

This is an appeal from a verdict and judgment of conviction upon an Indictment charging appellant Victoria Ruth Foughty Heller and her co-defendant, Cedric Theodore Berg, with violation of Title 18 U.S.C. Section 2422, the persuasion section of the White Slave Traffic Act. Both defendants were found guilty by verdict of a jury. (R. 4)

Appellant Heller, on October 3, 1955, filed a Motion for Acquittal Notwithstanding the Verdict, or in the Alternative a Motion for New Trial (R. 5)

On November 1, 1956, Judgment was entered against appellant Heller sentencing her to two years imprisonment (R. 9). On the same date, judgment was entered against her co-defendant Berg (R. 7).

Two days later, on November 3, 1955, an Order was entered denying appellant Heller's Motion for Acquittal and for a New Trial (R. 11).

Both defendants have appealed.

Notice of Appeal on behalf of appellant Heller was filed November 3, 1955. (R. 12-13). On November 28, 1955, the District Judge entered an Order extending the time for filing the transcript of record until January 31, 1956 (R. 18). The reporter's transcript of record was received by the Clerk of this Court on January 19, 1956 (R. 362). The printed record was received by appellant Heller on the 24th day of September, 1956.

## STATUTES INVOLVED

The White Slave Act, as last amended, and insofar as the same is involved in this action, is set forth as Section 2422, Title No. 18, U.S.C., and reads as follows:

### § 2422—Coercion or enticement of female:

“Whoever knowingly persuades, induces, entices or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other im-

moral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than \$5,000.00 or imprisoned not more than five years, or both.” (June 25, 1948 c. 645, 62 Stat. 812)  
Reviser’s Note: Based on Title 18 U.S.C. 1940 Ed. Sec. 399 (June 25, 1910, Ch. 395, Sec. 3, 36 Stat. 825)

## THE INDICTMENT

The indictment in this case, containing one count, was returned in the Western District of Washington, Northern Division, and reads as follows:

### Count I

That on or about April 13, 1955, Cedric Theodore Berg and Victoria Ruth Foughty Heller did knowingly, wilfully and unlawfully persuade, induce and entice Rose Drucilla West, a female person, to go from San Francisco, California, to the Northern Division of the Western District of Washington, with the intent that said Rose Drucilla West should engage in the practice of prostitution, debauchery, and for other immoral purposes, and did thereby knowingly cause the said Rose Drucilla West to go and be transported

as a passenger upon the line and route of a common carrier in interstate commerce.

All in violation of Section 2422, Title 18 U.S.C. A True Bill." (R. 3, 4)

## STATEMENT

### The Relationship of Defendants:

The appellant, Victoria Ruth Foughty Heller, is a 31 year old woman, and the mother of two children. She has been twice married and twice divorced, each union bearing one child. Both children lived with their mother at her home in Seattle, Washington (R. 246-248).

Mrs. Heller became engaged to be married to Robert McSharry, a seaman employed as quartermaster on the M.S.T.S. vessel "General John Polk" (R. 152). As part of their marriage plans they purchased a house in Seattle, Washington. This house, purchased in McSharry's name, was occupied by Mrs. Heller and her children pending her marriage (R. 248).

Cedric Theodore Berg, Mrs. Heller's co-defendant, was also a seaman employed on the M.S.T.S. vessel "General Polk" (R. 152), and became acquainted with Mrs. Heller in January, 1956, through his shipmate, Robert McSharry. Mrs. Heller and Mr. Berg became good friends, but there was no romantic attachment between them. Mrs. Heller and her fiancée, McSharry, saw Mr. Berg from time to time between January and April 1955 (R. 249). During this period Mr. Berg often told Mrs. Heller that he was in love with



Mrs. Rose West of Los Banos, California, and that he wanted her to come to Seattle to marry him (R. 251, 305).

### The Trips to California:

Mr. Berg met Rose West in 1947 at Firebaugh, California, where she was practicing prostitution, and had been associating with her since that time. Mrs. West stopped the practice of prostitution during the year 1951 or 1952, and Mr. Berg discussed marriage with her during the latter year (R. 301).<sup>1</sup>

In August, 1954, Mr. Berg went to Los Banos, California. While there he saw the witness, Rose West (R. 24, 302). During this visit, Mr. Berg and Rose West again discussed marriage and the possibility of making a home in Seattle (R. 302).<sup>2</sup> Mr. Berg denies that he at that time suggested that Rose West come to Seattle to practice prostitution, or that Mrs. West offered to do so (R. 302).

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<sup>1</sup>The Witness West denies ever discussing marriage with Berg, but admits they were good friends and were intimate a number of time in California (R. 69).

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<sup>2</sup>Mrs. West corroborates this visit, but states that Berg told her that if she wanted to come to Seattle and "work", that he would call her when his ship came in (R. 26-27).

In March, 1955, Mr. Berg again went to Los Banos, California, for the dual purpose of visiting his mother and seeing Rose West (R. 304). During this visit, Mr. Berg and Mrs. Rose West again discussed marriage and that in the presence of others, she stated she was planning to come to Seattle and marry Mr. Berg (R. 305).<sup>1</sup>

Mr. Berg returned to Seattle about March 28 or 29, 1955 (R. 306). Because he was then unemployed and short of money, Mrs. Heller allowed him to move into her home on April 1, 1955 (R. 252). This is corroborated by the testimony of defendant, Berg (R. 306).<sup>2</sup>

### The Telephone Conversations:

(a) *The First Call*: Rose West testified that following Mr. Berg's return to Seattle, her next contact with him was by telephone on Sunday, April 3, 1955 (R. 31). This call apparently originated from the Heller residence as shown by a telephone call toll ticket (Exhibit No. 5) (R. 141). This exhibit was admitted over objection of defense counsel. (R. 139) During this conversation, Rose West stated that she spoke to Mr. Berg and to a woman (R. 30, 31) whom

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<sup>1</sup>Mrs. West denies that marriage was ever discussed (R. 63); states her conversation with Mr. Berg concerned prostitution, and that she told Berg at that time that she would come to Seattle (R. 29).

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<sup>2</sup>The April 1st date was originally fixed by Berg as March 1, 1955 (R. 306), but was subsequently revised to April 1, 1955 (R. 307)

she identified later as Mrs. Heller (R. 102). During this telephone call, Mrs. West stated that she was told by the defendant, Berg, to "come on up, everything was O.K., and she had nothing to worry about" (R. 32).<sup>1</sup> On re-direct examination, this conversation was amplified by the witness to include a statement by Mrs. Heller that she should "come and give it a try" (R. 105).

Mr. Berg admits making this call, but states that the purpose was to advise Mrs. West that he was looking for a place to live as he had promised her he would do as soon as he got back to Seattle (R. 308). Mr. Berg further catagorically denies that in this conversation, or in any conversations with Mrs. West, any mention of prostitution was made or implied (R. 308).

(b) *The Second Call*: Mrs. West testified that "a couple of days later" she received another call from Mr. Berg (R. 32). Mrs. West testified that he inquired as to why she hadn't come up. She said she didn't have the money, and was told he would send it (R. 33). Again, on re-direct examination, the witness amplified this call to include a conversation with Mrs. Heller wherein she was asked again why she didn't come up (R. 104).

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<sup>1</sup> It is to be noted that the trial court repeatedly instructed the jury that these conversations related by Mrs. West with Mr. Berg were not to be considered in connection with the charge against Mrs. Heller (R. 24, 28, 31-32, 38).

On April 7, 1955, Mrs. West received \$60.00 from Mr. Berg (R. 33). No part of this money was contributed by Mrs. Heller (R. 254, 309)<sup>1</sup> nor did Mrs. Heller know at that time that any money had been sent (R. 254-255).

Evidence of a third telephone call was received (R. 33) under instructions by the Court that it did not apply to Mrs. Heller (R. 31-32, 147).

### The Trip to Seattle:

On April 12, 1955, Rose West was driven by friends from her Los Banos home to the San Francisco Airport (R. 35). She testified that prior to leaving her home, she had called the airport to see if she could get on the plane (R. 36). Upon her arrival at the airport, she "went to the Western Airlines there and gave my name and got my ticket" (R. 37).

Witness West's plane arrived at the Seattle airport between 5:30 and 6:00 A.M. the next day (R. 37).

Upon her arrival, she took a taxicab to the Heller residence (R. 37, 38).

### Events in Seattle:

Mrs. West remained at the Heller home for less than four days. During this period of time, no acts of prostitution were committed (R. 260, 311, 312) nor

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<sup>1</sup> Exhibits Nos. 1, 2, 3 and 4 evidencing the sending of this money were admitted only as to defendant Berg, and the jury instructed not to consider them in connection with Mrs. Heller (R. 137).

was there any discussion relative to that subject (R. 254).<sup>1</sup>

Mrs. West left the Heller home Saturday morning, April 16, 1955 (R. 47) due to an altercation with the defendants over the theft of money by the witness (R. 318, 319).<sup>2</sup>

From the Heller home, Mrs. West went next door, borrowed \$20.00 from the neighbor (R. 192) and was taken to a downtown hotel (R. 194), and subsequently was interviewed by detectives (R. 48).

### **SPECIFICATIONS OF ERROR TO BE URGED**

1. The District Court erred in denying the Motion of Appellant, Victoria Ruth Foughty Heller, for acquittal, in that:

(a) The evidence was insufficient to take the case to the jury.

(b) There was no evidence that the alleged victim, Rose Drucilla West, was carried or trans-

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<sup>1</sup>This is disputed by Mrs. West who states that she discussed prostitution with Mrs. Heller the day of her arrival (R. 42, 43) and that three acts of intercourse were committed during her stay (R. 43, 45). Mrs. West further testified that Mrs. Heller received part of the money from these acts (R. 46). This is denied by Mrs. Heller (R. 268).

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<sup>2</sup>Mrs. West denies the theft (R. 71), but testimony by government witness, Busby, corroborates defendants' testimony (R. 189).



ported as a passenger upon a common carrier in interstate commerce.

2. The District Court erred in advising the jury that the purpose of the Mann Act (18 U.S.C. 2422) was to prevent immortality and debauchery.

## SUMMARY OF ARGUMENT

### I.

Even a cursory examination of the Record in this cause establishes that whatever case may have been made out against the appellant, Victoria Ruth Foughy Heller, it was predicated solely upon the testimony of the alleged victim, Rose Drucilla West Dill.<sup>1</sup>

From the testimony of Mrs. West herself, it is apparent that an agreement to come to Seattle from California had been formulated between appellant Heller's co-defendant, Berg, and Mrs. West prior to the date when Mrs. West first knew or even talked to Mrs. Heller.

It is appellant Heller's position that in view of this fact, she did not "*persuade*", "*induce*", nor "*entice*" the victim from California to Seattle, Washington—nor by persuasion, inducement or enticement did appellant "*cause*" the alleged victim to move in interstate commerce.

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<sup>1</sup> Mrs. West testified that she had been married in the interim between the finding and return of the Indictment and the date of trial. Hence, she is referred to in the proceedings, and in this Brief, by her surname "West" as is charged in the Indictment.

The terms "persuade", "induce" and "entice", as used in the White Slave Trade Act (*supra*) have inherent in them the meaning that, because of such persuasion, inducement or enticement, the victim is "caused" to move in interstate traffic. Stated differently, to be guilty under the cited statute, the defendant's inducements must have been the moving cause in bringing about the prohibited traffic.

By ways of analogy, let us pose a situation: It has already been determined that mere ownership or operation of a house of prostitution to which women come in interstate commerce is insufficient to sustain a charge under this act. (*McGuire v. United States*, 152 Fed. (2nd) 577) Now, suppose the case of the owner of a house of prostitution in Seattle, who, while returning to Seattle from California, meets a prostitute on her way to that city to ply her trade. Suppose, further, that while the train was passing through Oregon, he offered her a job at his brothel. Can it be said his offer constituted the inducement which caused her trip to the City of Seattle for the prohibited purposes? We think not. At the time of his contact with this prostitute, she had already formed the intent to come for that purpose, and his offer in no wise caused the continuation of her travel nor altered her course of conduct.

In the instant case, even adopting the government's facts, the relationship of Mrs. West to Mrs. Heller is no stronger. Even by Mrs. West's own testi-

mony, at the time of her original meeting with this appellant, she had already agreed with Mr. Berg to come to Seattle for prostitution. Therefore, even if as Mrs. West states, Mrs. Heller offered her a place to work, such offer was not the efficient moving cause of the prohibited travel.

## II.

The evidence of the government failed to establish that Mrs. West travelled by Common Carrier from California to Seattle. The testimony of Mrs. West in this regard (R. 26, 37), as set forth in detail subsequently in this Brief, is merely to the effect that the alleged victim purchased a ticket from San Francisco to Seattle from Western Airlines, and that she subsequently arrived at the Seattle airport. There is no evidence that Mrs. West ever boarded a Western Airline plane, nor does the record indicate in any fashion whether the plane which transported Mrs. West was an aircraft carrying other passengers; whether it was a special or chartered flight; whether it was a private or commercial craft, or any factor upon which its status as a common carrier could be determined by other than supposition and speculation.

## III.

Appellant further contends that if evidence, admissible only against the co-defendant Berg, be stricken from consideration in determining the guilt or innocence of Mrs. Heller, the Record taken as a whole

fails to disclose evidence sufficient to warrant the verdict against this appellant.

#### IV.

At the close of the trial, the Court, in its instructions, stated to the jury that the purpose of the law was to prevent immorality and debauchery. Exception is taken to this instruction. This gratuitous comment by the Court could serve no useful purpose in assisting the jury in its deliberations, and when read in context, most probably was construed by the jury as indicating that enforcement of the White Slave Trade Act as against appellant and her co-defendant was particularly appropriate.

### ARGUMENT

#### I.

ONE CANNOT BE INDUCED, PERSUADED OR ENTICED TO DO THAT WHICH HE INTENDS:

The defendants are charged jointly with violation of the persuasion section of the White Slave Traffic Act (18 U.S.C. 2422) by an indictment charging that they:

“did knowingly, wilfully and unlawfully persuade, induce and entice one Rose Drucilla West, a female person, to go from San Francisco, California to the Northern Division of the Western District of Washington, with the intent that said Rose Drucilla West should engage in the practice of prostitution, debauchery, and for other im-

moral purposes, and did thereby knowingly cause the said Rose Drucilla West to go and be transported as a passenger upon the line and route of a common carrier in interstate commerce (R-3).

Both defendants being charged as principals, with no allegations of conspiracy, the acts of one defendant are not chargeable to the other.

The Indictment (R. 4) is framed substantially in the language of the statute, which provides as follows: § 22422—Coercion or enticement of female:

“Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia, or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia, or in any Territory or Possession of the United States, shall be fined not more than \$5,000.00 or imprisoned for not more than five years, or both.” June 25, 1948, c 645, 62 Stat. 812.



From a reading of the foregoing section, it is obvious that the intent of the law is to punish those who, by persuasion, inducement, enticement or coercion, are successful in causing the interstate or foreign movement of females for immoral purposes. It is equally apparent from the statute that the law is not formulated to penalize persons whose acts or conduct is unsuccessful in that purpose or who, by such acts or conduct, are not the efficient moving cause in such traffic. (*McGuire v. United States.*) (*supra*).

It is therefore necessary to a consideration of the evidence against either or both of the defendants to analyze the meaning of the words "persuade", "induce" and "entice" as they are used in the White Slave act. (*Supra*).

In construing the meaning of Statutes, it is well settled that, unless a contrary intent appears from the act itself, the words and phrases of the statute are to be taken in their ordinary acceptation and popular meaning (50 *Am. Jur. Statutes*, Sec. 414, p. 438). This rule has been many times affirmed by the Supreme Court of the United States:

"In the absence of a definition of a statutory word by the legislature, the etymology of the word must be considered and its ordinary meaning applied." *United States v. Lombardo*, 241 U. S. 73; 36 S. Ct. 508; 60 L. ed. 897.

Accord: *Old Colony T. Co. v. Commissioner of Internal Revenue*, 301 U. S. 379; 57 S. Ct. 813;

81 L. ed. 1169: *Roseman v. United States*, 323 U. S. 658; 65 S. Ct. 536; 89 L. ed. 535.

Furthermore, as was stated in 62 *Cases of Jam v. United States*, 340 U. S. 595; 71 S. Ct. 515; 95 L. ed. 566:

“In its anxiety to effectuate a congressional purpose of protecting the public, a court must take care not to extend the scope of a statute beyond the point where congress intended it to stop.”

The words “persuade” “induce” and “entice” are common English words having well established meanings which do not permit of a strained or technical interpretation.

PERSUADE: “To induce (one) by argument, entreaty, or expostulation into a determination, decision, conclusion, belief or the like.”

Synonym: “See induce.”

INDUCE: “To move by persuasion . . . Induce and persuade, agree in the idea of moving or influencing a course of action.”

Synonym: “Entice”

ENTICE: “To draw on by exciting hope or desire . . . often, in a bad sense, to lead astray, to induce to evil . . .”

Synonym: “Persuade, inveigle.”

WEBSTER'S NEW INTERNATIONAL DICTIONARY, SECOND EDITION.

Webster's definitions were adopted in |interpret-

ing the White Slave Traffic Act (*Supra*) in *La Page v. United States*, 146 Fed. (2nd) 536, and the terms "inducing" and "persuading" were held synonymous in *People v. De Joy*, 198 Ill. App. 361, a pandering prosecution.

By definition, then, the terms "persuade", "induce" and "entice" require that the persuasion, inducement or enticement be the moving cause of the act.

"To inveigle or persuade or entice necessarily implies that the person is persuaded or enticed and yields assent as a result of the persuading or enticing". *Ancarola v. United States*, 1 Fed. 676.

If the persuasion section of the White Slave Traffic Act (*Supra*) is read in the light of the usual and common meaning of the words therein, and in the light of the judicial construction placed upon those words, it must be concluded that a defendant is immune for prosecution under that section unless:

1. He persuades, induces or entices a female to move in interstate traffic for immoral purposes, and
2. Such persuasion, inducement or enticement is the efficient moving cause of the prohibited traffic.

As a necessary corollary, if the intent to move in interstate commerce for immoral purposes is formulated and extant in the mind of the female at the time of the alleged persuasion, inducement, or en-

ticement, such persuasion, inducement or enticement cannot be considered the efficient, moving cause or factor in the prohibited traffic.

This reasoning has often been applied in somewhat analogous situations to protect law enforcement officials from the allegation of entrapment. Entrapment is a defense based upon the inducement or instigation of criminal acts by police (*Polski v. U. S.*, CCA Minn. 38 Fed. (2nd) 686). Thus, it has been repeatedly held that a crime was neither induced nor persuaded by law officials where the intent to commit the same originated with, or was extant in the mind of, the accused at the time the blandishments or rewards were offered. (22 *C.J.S. Criminal Law*, Sec. 45). Or, were we to paraphrase the general holdings of the court upon this subject, we might state that one cannot be entrapped, by persuasion or inducement, to perpetrate a crime which he already intended to commit.

#### As Applied to the Case at Bar:

The guilt of the appellant, Heller, if it be proved at all, must rest upon the insecure foundation of the testimony of the female whom, the government charges, Mrs. Heller persuaded, induced or enticed to travel in interstate commerce for immoral purposes.

If we accept the testimony of this witness at face value, we are immediately confronted with her testimony that, although she had never met Mrs. Heller

prior to a brief telephone conversation on April 3, 1955, she, the witness, had nevertheless concluded and determined during March, 1955, to come to Seattle for the purpose of prostitution. In response to questioning by the government, Mrs. West testified as follows relative to a conversation with Mr. Berg at Los Banos, California, during the month of March, 1955: (R. 25)

Q. "Did he say anything further; did you say anything about whether you would or wouldn't? (come to Seattle for prostitution) (Explanatory note added).

A. "I told him then I would come up, and he said he would let me know when he got back up here."

Again, on page 29, still on direct examination, the witness testified:

Q. (Continuing) "Was there anything further said, Miss West?"

A. "Well, when he told me about the house of prostitution he said it was O.K., nothing to worry about, everything all right, and that is all he said."

Q. "Did you agree to come up here at that time or not?"

A. "Yes, I said I would come up."

Although the omitted portion of the testimony contains references by the witness to "Vicky", (R. 29) it is to be borne in mind that, upon objection, the



trial court instructed the jury that the conversations of the witness with defendant, Berg, were not to be considered as against the appellant, Heller (R. 38)

Thus, from the testimony of Mrs. West, herself, it is clearly established that in March, 1955—a date not more than 30 days prior to meeting or conversing with Mrs. Heller—the witness had formulated and had extant in her mind the fully formulated intention to come to Seattle from Los Banos, California, for the purpose of practicing prostitution.

It is therefore respectfully submitted that no subsequent act on the part of the appellant, Heller, could have “persuaded, induced or enticed” the witness, Rose West, to do that very thing which, in March, 1955, she had already determined to do.

Indeed, if we view the record on the basis of Mrs. West’s testimony, it is obvious that an agreement was reached in March, 1955, between Mr. Berg and Mrs. West relative to the practice of prostitution in Seattle; that this agreement was further implemented by the transmittal of money to Mrs. West—a matter to which Mrs. Heller was not a party (R. 33, 254, 309)—and that their mutual intentions were consummated by the journey of Mrs. West to meet Mr. Berg in Seattle on April 13, 1955. These arrangements between Mr. Berg and Mrs. West—the solicitation of Mrs. West by personal conversation in California—the transmittal of the funds from Seattle, and finally, the trip in interstate commerce itself—evidence of themselves an agreement, so fully planned and con-

summed as to negative any inference from the record that the appellant, Mrs. Heller, was in any way instrumental as the effective moving force in "causing" the prohibited interstate traffic.

## II.

### THERE IS NO EVIDENCE THAT THE ALLEGED VICTIM WAS TRANSPORTED UPON A COMMON CARRIER:

During the course of the trial, the government sought to sustain the allegations of the indictment relative to transportation of Rose West "as a passenger upon the line and route of a common carrier in interstate commerce" (R. 3), by the testimony of the alleged victim. The testimony of Rose West upon this subject may be synthesized as follows (R. 36, 37):

"Q. When you left Los Banos, how did you travel to San Francisco?

A. My neighbors next door drove me to the airport."

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"Q. Where did Mr. Scarpete drive you?

A. He drove me right to the airport and I got out and went in and they left.

Q. What did you next do, Mrs. West, after they left?

A. Just before I left Los Banos, I called the airport to see if I could get on the plane and when they left me off I went up to the Western

Airline there and gave my name and got my ticket.

Q. Do you remember how much it cost you for your airplane ticket?

A. Thirty Four Dollars and a little bit over.

Q. And where was it you were going: from San Francisco to where?

A. I was coming from there to the Seattle Airport."

Solely upon this testimony, and the testimony of one Tony Baffuna to the effect that a porter carried the victim's bags from the car into the San Francisco airport (R. 113), rests the entire case of the United States upon this point.

From this testimony, and this testimony alone, the government seeks to infer: (1) that Mrs. West actually travelled upon a Western Airline plane from San Francisco, California, to Seattle, Washington, and, (2) that assuming Mrs. West did board as a passenger, a plane belonging to "Western Airline", that such carrier was a common carrier, and was operating that flight as such. It is submitted that the evidence is wholly insufficient upon this issue.

It is elemental that the accused enters on the trial with the presumption of innocence in her favor. The presumption does not cease when the case is submitted to the jury, but attends the accused throughout the trial, at every stage of the proceedings, until the close thereof when the jury arrive at their verdict. (22 C.J.S. Criminal Law Sec. 581, p. 896, citing U. S.

*v. Brunett*, C.C.A. Mo., 53 Fed. (2nd) 219; *Powell v. State of Alabama*, 53 S. Ct. 55; 287 U. S. 45; 77 L. ed. 158)

The defendant in a criminal matter is innocent until proven guilty beyond a reasonable doubt and

“the burden was upon the Government to make this proof, and evidence that is as consistent with innocence as with guilt is insufficient to sustain a conviction.”

Furthermore:

“Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused.” Citing *Vernon v. United States*, 146 Fed. 121; *United States v. Richards* (D.C.) 149 Fed. 443; *Hayes v. United States*, 169 Fed. 101; *Hart v. United States*, 84 Fed. 799.

Nor will the presumption of innocence be overcome by evidence merely of facts which are not plainly inconsistent with innocence. (*Wolf v. United States*, 239 Fed. 902). In *Kassin v. United States*, 87 Fed. (2d) 184, the court succinctly stated the rule as follows:

“In each case, however, where the evidence is purely circumstantial, the links in the chain must be clearly proven, and taken together must point not to the possibility or probability, but to the moral certainty of guilt. That is, the inferences

which may reasonably be drawn from them as a whole must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence". (*Paddock v. United States* (CCA) 79 Fed. (2d) 872; *De Luca v. United States* (C.C.A.) 298 Fed. 412; *Wright v. United States* (C.C.A.) 227 Fed. 855.

In view of the presumption of innocence in favor the appellant, Mrs. Heller, it is submitted that the testimony of the witnesses, West and Baffuna, as herein set forth, is insufficient to conclude, beyond a reasonable doubt, that the alleged victim travelled by common carrier in interstate commerce.

In making a determination of this issue, it must be borne in mind (1) that it was incumbent upon the Government to prove the element of common carrier beyond a reasonable doubt (*Christoffel v. United States*, 338 U.S. 841; 69 S. Ct. 1447; 93 L. ed. 1826), (2) that there was no direct evidence that Mrs. West actually travelled upon a Western Airline plane, or, if she did, that it was a common carrier; and (3) that all these matters were susceptible of direct and positive evidence.

The evidence adduced by the Government in proof of this vital issue is, at best, both inferential and circumstantial. From the testimony that Rose West purchased a ticket, the Government seeks to infer that: (1) Rose West actually boarded a Western Airline plane and (2) travelled upon that plane, as a passen-



ger from San Francisco, California, to Seattle, Washington. From the same evidence, and the further testimony relative to her prior call to Western Airline, the Government undertakes a further, and perhaps greater, inductive leap to the conclusion that the plane upon which she travelled was a common carrier. This amounts to nothing but an effort to pile inference upon inference, and certainly does not meet the burden of proof placed upon the prosecution.

If Rose West, as a matter of fact, actually did travel by Western Airline plane from San Francisco to Seattle, a simple question propounded to her could have established that fact. If, as a matter of fact, such plane was a common carrier, airline records, certainly available to the Government, could have established that premise. But this testimony, easily procured by the Government, was never offered or adduced. On the contrary, we are left with a record which is silent upon this vital issue.

Upon the record, it is equally as consistent with the evidence that Rose West travelled upon a private plane, or upon a chartered or special flight not available to the general public.

It is a well established rule applicable to circumstantial evidence that when a relevant, competent and material fact is in possession of the prosecution and is not developed, it will not be resolved against a defendant. Rather, it is to be presumed that such evidence would be unfavorable to the Government. (22 *C.J.S. Crim. Law Sec. 594, 5995*) ; *Massey v. State*,

226 S.W. (2d) 856, 154 Tex. Cr. 263; *People v. Reed*, 40 N.Y.S. 793, 180 Misc. 289.

*Redfield on Carriers and other Bailees*, Sec. 19, P. 15, states as follows:

“It is generally considered that where the carrier undertakes to carry only for the particular occasion, *pro hac vice*, as it is called, he cannot be held responsible as a common carrier. So, also, if the carrier be employed in carrying for one or a definite number of persons, by way of special undertaking, he is only a private carrier. To constitute one a common carrier he must make that a regular and constant business, or at all events, he must, for the time, hold himself ready to carry for all persons, indifferently, who choose to employ him.”

Furthermore, it is settled that a common carrier may contract to render special services as a private carrier. (13 *C.J.S. Carriers*, Sec. 5; *Santa Fe P. & P. R. Co. v. Grant Bros. Constr. Co.*, 228 U. S. 177; 33 S. Ct. 474, 57 L. ed. 560; *Baltimore & Ohio S.W.R. Co. v. Voigt*, 176 U. S. 498, 20 S. Ct. 385; 44 L. ed. 560)

The matter of proof of transportation by common carrier has been several times before the courts. In *Coltabellota v. United States*, 45 Fed. (2d) 117, the defendant was convicted of two counts of violating the White Slave Traffic Act. The evidence disclosed that the bus on which the alleged victim was trans-

ported from one state to another took on passengers who had tickets; some twenty passengers made the trip at the time in question; that the bus went from one state to another, and that it had a conductor.

The Court there said:

“The statute on which the second count was based required the government to prove beyond a reasonable doubt that the bus used to transport the girl to New Jersey was a common carrier. This was a fact susceptible of definite and direct proof. Yet nothing about it was shown except that it was a bus and took passengers who had tickets; that some twenty passengers made the trip in question; that it went from Fortieth Street, Manhattan, to Bogato, N. J.; that it had a conductor. We need not go into the distinction between a common and a private carrier for there are no facts in evidence which point to this bus being one rather than the other. *All distinctive facts, supposedly so easy to have been obtained, are lacking, and there was not evidence rising above the status of mere probability that the bus was a common carrier.*” (emphasis supplied.)

It is to be noted that the facts in the *Coltabellota* decision (*supra*) are even stronger than in the instant case. In the cited decision, there was direct evidence before the Court that (1) the victim actually boarded the bus, and (2) the bus transported other passengers who had tickets. In the instant case, proof that Rose West actually boarded the Western Airline

plane is wholly inferential, and the record is entirely silent as to whether the plane carried any other passengers.

It is interesting to note from the emphasized portion of the *Coltabellota* decision (*supra*) that the court exercised the inference that facts not proved by the prosecution are presumed favorable to the defendant, and refused to resolve them against the defendant.

In 1955, the matter of proof of common carrier was again before the courts in the case of *Politano v. United States*, 220 Fed. (2d) 217 (C.C.A. 10th, 1955). The decision of the circuit court did nothing to detract from the decision in the *Coltabellota* decision (*supra*) but merely stated that proof of common carrier may be made by other than direct evidence, and determined that from the facts there in evidence, there was sufficient testimony to sustain the trial court's finding, although the right of the trial court to take judicial notice of common carrier status was denied.

The *Politano* decision (*supra*) is, furthermore, distinguished from the instant case upon facts alone. In the cited decision, there is direct evidence that the victim actually boarded and travelled as a passenger upon the Continental Bus Lines in interstate commerce; there is direct evidence that the bus upon which she travelled was a scheduled carrier, and that the madam was able to determine the time of the victim's arrival by reference to bus schedules. In the instant case, such direct evidence is wholly lacking. Only

by inference can it be assumed that Mrs. West even boarded the Western Airline plane, and it requires a further inductive leap, based solely upon this inference, to assume if Mrs. West did board a Western Airline plane, that it was a flight open to the general public as a common carrier. As was stated in the *Coltabellota* decision (*supra*), such proof "does not rise above mere probability" that Mrs. West travelled by common carrier.

Briefly summarized, then, it is the position of the Appellant Heller that proof of transportation by common carrier is wholly insufficient. What evidence there is, as disclosed by the record, is circumstantial, and requires inference to be pyramided upon inference to sustain the verdict. All the necessary evidence was presumably available to the government, and it must be presumed that the government's failure to present it at the trial was due to the fact that such evidence was unfavorable to the prosecution.

### III.

#### THE EVIDENCE AGAINST THIS APPELLANT IS INSUFFICIENT TO SUPPORT THE VERDICT

In addition to the specific matters hereinbefore considered, it is submitted that the evidence as contained in the Record is wholly insufficient to sustain the verdict as against this appellant, Victoria Ruth Foughty Heller.

As has been previously noted, Mrs. Heller and her co-defendant, Cedric Theodore Berg, were charged and tried jointly, as principals, with no allegations of



conspiracy. Indeed, the record contains not a whisper of testimony or other evidence from which the jury might infer that the parties acted in concert in the commission of the alleged offense.

It is admitted that if the jury chose to believe the testimony of the alleged victim, the record contains testimony of Mrs. West from which the jury might well believe that the purpose of the alleged trip was the practice of prostitution in Seattle, Washington. Such evidence, however, is contained in the testimony of Mrs. West relative to certain conversations had, in person, with Mr. Berg at Los Banos, California during August, 1954, and March, 1955. It is to be remembered that these conversations took place prior to the time that Mrs. West, the alleged victim, ever met or even conversed by long-distance telephone with Mrs. Heller. Since the Indictment contained no allegations of conspiracy, and since the government at no time maintained that the parties acted in concert, these conversations are pure hearesay as to Mrs. Heller, and the court repeatedly sustained objections to the admission of these conversations in the consideration of the guilt or innocence of Mrs. Heller (R. 24, 28, 31, 32, 38).

If the wheat be separated from the chaff, and the evidence admissible against Mr. Berg and inadmissible against Mrs. Heller be stricken, the government's case against Mrs. Heller boils down to Mrs. West's testimony that: (1) She had two brief telephone conversations with Mrs. Heller prior to coming to Seattle,

(R. 102-106) (2) She spoke to Mrs. Heller by telephone from the Seattle airport, (R. 104) and (3) that she committed three acts of prostitution at the home of Mrs. Heller (R. 44, 45,) for which she received \$100.00, which sum she divided with Mrs. Heller (R. 46). In passing, it should be noted that the alleged victim is an admitted common prostitute (R. 50, 51), and certainly her testimony should be most carefully scrutinized, particularly where it constitutes the sole evidence upon which the conviction of Mrs. Heller could be sustained.

The only evidence admitted by the trial court (as against Mrs. Heller) relative to the content of the pivotal telephone conversations between Rose West and Mrs. Heller is contained in the testimony of the alleged victim upon cross examination, and upon re-direct examination. The testimony of this witness upon direct examination relative to this subject was held inadmissible as to this appellant (R. 24, 25, 31, 32, 38) For the convenience of the Court, this testimony is set forth at length as follows:

#### **The First Telephone Call:**

By Mr. Gutersen (Re-direct examination)

Q. The first time that you spoke on the 'phone to Mr. Berg on the early Sunday Morning Call when you were in Los Banos and received a call from him, did you also talk to someone on the 'phone besides Mr. Berg?

A. "I talked to "Vicky".

Q. The first call on that Sunday Morning; what conversation did you have with a lady named "Vicky"?

A. She talked to me and said "Are you going to come up? Teddy told me about you. Why don't you come up?" (R. 102, 103)

On Re-Cross examination, the witness testified as follows relative to this first telephone conversation:

By Mr. Kosher:

Q. What did you say exactly; what were her exact words on that first conversation? Can you tell me that?

A. I don't know whether I can tell exact words or not but in talking she said "Why don't you come up and try it." She said everything was O.K. "You can stay at the house with me. It is good and you can stay right here. Come and give it a try."

Q. Now, at no time did she tell you to get on the plane and to come up here, that you could practice prostitution in her home after you got here, did she?

A. She didn't use the word "prostitute". (R. 105, 106)

### The Second Telephone Call:

By Mr. Guterson. (Re-direct examination)

Q. Relate the conversation between you and Vicky on this occasion?

A. She wanted to know why I didn't come up and I said I didn't have the money and she said they would send me the money and "if you don't have your clothes ready, just throw them in a suit case and you can straighten them out after you get here." (R. 104)

Mrs. West subsequently testified that upon her arrival at the Seattle airport, she called the telephone number of the Heller residence and talked to Mrs. Heller (R. 104). When she was asked on direct examination who had furnished that telephone number, her answer was as follows:

Q. Who told you to call that number?

A. Teddy gave me the number to call. (R. 37)

The testimony of the government's own witnesses disclosed that Mrs. Heller had nothing to do with the sending of any monies to Mrs. West, and exhibits Nos. 1, 2, 3, and 4 evidencing the sending and receipt of the telegraphic money order were held inadmissible against appellant Heller (R. 137)

The above quoted testimony, and the testimony of the alleged victim relative to certain acts of prostitution committed at the Heller residence (R. 44, 45), and the division of the proceeds thereof with Mrs. Heller (R. 36) constitute the entire case of the government against this appellant.

Marshalled against these shreds and scraps of testimony, is the uncontroverted testimony of Mr. Berg

that he told Mrs. Heller that Mrs. West was coming to Seattle to marry him (R. 307); Mr. Berg's denial that any acts of prostitution took place at the Heller home after the arrival of the alleged victim (R. 311, 312); and the testimony of the victim herself (R. 47) [and corroborated by Mr. Berg (R. 318, 319), Mr. Busby (R. 187) and the appellant herself (R. 269)] that Mrs. West left the Heller residence, obviously in high dudgeon, after being accused of stealing money from Mr. Busby.

It is true that the jury had a right to give such credibility to the various witnesses as they saw fit. Nevertheless, before a verdict of "guilty" could be returned against Mrs. Heller, the jury was required to find competent, material, and relevant evidence against Mrs. Heller which could fix her guilt beyond a reasonable doubt. This evidence is simply not in the record.

On the contrary, it is apparent that the jury, despite the instruction of the trial court to consider the evidence separately against each defendant, (R. 346, 350), imputed to Mrs. Heller the acts and conversations of the defendant Berg, and found the defendants had conspired together to bring about the prohibited traffic in interstate commerce. For it is only with the background of the conversations between Mr. Berg and the alleged victim that reasonable minds could conclude that the telephone conversations between Mrs. Heller and Mrs. West were intended to induce the alleged victim to come to Seattle for im-



moral purposes. Had these defendants, Mrs. Heller and Mr. Berg been tried separately, and the inadmissible portions of the testimony never placed before the jury, it is inconceivable that such a verdict could have been rendered by reasonable men and women.

It is therefore respectfully submitted that the evidence adduced *as against Mrs. Heller* is insufficient to rebut the presumption of innocence, and that the government failed to prove the guilt of this defendant beyond a reasonable doubt. The verdict, as to Mrs. Heller, should be reversed upon this ground.

#### IV.

### THE COURT ERRED IN ADVISING THE JURY THAT THE PURPOSE OF THE MANN ACT WAS TO PREVENT IMMORALITY:

In its charge to the jury and the conclusion of the trial, the Court instructed the jury as follows: (R. 347)

“The law under which this indictment has been returned is a Congressional exercise of rightful power forbidding the use of interstate transportation and commerce as an agency to promote immorality such as prostitution and debauchery.”

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“The law is directed against the use of interstate transportation or commerce for immoral purposes or in promoting or carrying out such purposes.”

It is submitted that the above-quoted portions of the Court's instructions, gratuitously stated, calling the attention of the jury to the purpose of the law, could do nothing by way of aiding the jury in its deliberations, and could result in nothing but prejudice to the defendants.

It is the appellant Heller's position that the purpose of the law, without comment of the Court, is so patent and obvious that the comment of the trial judge must necessarily cause a juror to seek a reason for such redundant remarks. In seeking such justification, the juror might well conclude that, in the opinion of the judge, the purpose of the particular statute was well suited to the defendants whose fate the juror must decide.

Comments upon the history, object or purpose of the law are not the proper subject of instructions. The court performs its full duty in charging the jury as to matters of law when it states what the law is, without any exposition upon its reasons (33 *Am. Jur., Trial, Sec. 628*).

All the foregoing is particularly appropriate when one considers that the entire case propounded by the government rested upon the testimony of an admitted prostitute. (R. 50, 51) Though it be within the province of the jury to determine the credibility of this witness, in a trial where the evidence was as meagre as in the instant case, any tipping or weighting of the scales of justice must be scrupulously avoided,

and the defendants afforded a fair and impartial trial.

While not directly in point, the remarks in *Billeci v. United States*, 87 App. D.C. 274, 184 Fed. (2d) 394, 24 A.L.R. (2d) 881 (1950) are appropriate.

“A federal trial judge in a criminal case is (sic) not an inert figure. He is not a mere moderator. Besides his own exclusive functions of conducting the trial and declaring the applicable law, he may guide and assist the jury in its consideration of the evidence. The purpose of this comment is to aid, through his experience, the inexperienced laymen in the box in finding the truth in the confusing conflicts of contradictory evidence. In exceptional cases he may even express his opinion upon the evidence, or phases of it. But there is a constitutional line across which he cannot go. The accused has a right to a trial by the jury. That means that his guilt or innocence must be decided by twelve laymen and not by the one judge. A judge cannot impinge upon that right any more than he can destroy it. He cannot press upon the jury the weight of his influence any more than he can eliminate the jury altogether. It is for this reason that courts have held time and again that a trial judge cannot be argumentative in his comments; he cannot be an advocate; he cannot urge his own view of the guilt or innocence of the accused. Of course, he may direct judgment of acquittal under proper circumstances.

“Moreover, other indestructible principles of our criminal law are pertinent to the comment of a judge upon the evidence. An accused is presumed to be innocent. Guilt must be established beyond a reasonable doubt. All twelve jurors must be convinced beyond that doubt; if only one of them fixedly has a reasonable doubt, a verdict of guilt cannot be returned. These principles are not pious platitudes recited to placate the shades of venerated legal ancients. They are working rules of law binding upon the court. Startling though the concept is, when fully appreciated, those rules mean that the prosecutor in a criminal case must actually overcome the presumption of innocence, all reasonable doubts as to guilt, and the unanimous verdict requirement.

“The public interest requires that persons who have committed crimes be convicted of them. But the responsibility for producing the evidence which will persuade twelve jurors of guilt beyond a reasonable doubt is upon the prosecutor. It is a serious public responsibility, but it is upon the prosecutor and upon him alone. The judge has no part in that task. The prosecutor represents society in the prosecution. The attorney for the defense represents the accused. The judge is a disinterested and objective participant in the proceeding. ‘Prosecution and judgment are two quite separate functions in the administration of justice; they must not merge.’

“The difference between assisting the jury,

which is a duty of a federal judge, and encroaching upon its responsibilities, which is forbidden, has been developed at great length many times, as we have pointed out. When a federal judge comments upon evidence by expressing his opinion upon phases of it, he is treading close to the line which divides proper judicial action from the field which is exclusively the jury's. Therefore he must make it unequivocally clear to the jurors that conclusions upon such matters are theirs, not his, to make; and he must do so in such manner and at such time that the jury will not be left in doubt; references in some remote or obscure portion of a long charge will not suffice for the purpose.

“After a jury has returned a verdict of guilty the defendant is no longer the accused but is the convicted. It is at that point, and not until that point, that punishment becomes a function of the judge.”

Furthermore, the quoted remarks of the trial court, while perhaps of interest to the legal profession, were unsuitable to be given juries for their guidance. These remarks, included as they were within the charge to the jury, at best could be interpreted as no more than a directive to the jury, from the bench, for enforcement of the particular statute in the case at bar. While it may be true that such a directive or appeal may be proper when forthcoming from a public prosecutor, a partisan in the trial, such remarks



are inappropriate when issued from the bench, the unbiased mediator of the proceedings.

We hasten to state at this point that we do not here imply that such a result was ever contemplated by the district court, nor do we believe that the court, at any time, intended to express to the jury any conclusion he may have reached during the course of the trial. We do feel, however, that these inadvertent remarks by the court could do nothing to assist the jury, and must, of necessity, prejudiced the appellant's cause in the eyes of the jury.

### CONCLUSION

For the reasons stated, the judgment should be reversed, and the charge dismissed as against this appellant, Victoria Ruth Foughty Heller.

Respectfully submitted,

MAX KOSHER

*Attorney for Appellant*